

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, . Case Number 21-cr-116-1
Plaintiff, .
vs. .
WILLIAM MCCALL CALHOUN, JR., . March 5, 2021
Defendant. . 1:12 p.m.
- - - - -

TRANSCRIPT OF MOTION HEARING, VOLUME I
BEFORE THE HONORABLE DABNEY L. FRIEDRICH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: ADAM ALEXANDER, AUSA
United States Attorney's Office
222 West Seventh Avenue
Anchorage, Alaska 99501

For the Defendant: JESSICA SHERMAN-STOLTZ, ESQ.
Sherman-Stoltz Law Group, PLLC
P.O. Box 69
Gum Spring, Virginia 23065

Official Court Reporter: SARA A. WICK, RPR, CRR
333 Constitution Avenue Northwest
U.S. Courthouse, Room 4704-B
Washington, D.C. 20001
202-354-3284

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C O N T E N T S

TESTIMONY

WILLIAM M. CALHOUN, JR.	Direct Examination.....	14
	Cross-Examination.....	33
	Redirect Examination.....	54

P R O C E E D I N G S

(All participants present via video conference.)

THE COURTROOM DEPUTY: Your Honor, we are in Criminal Action 21-116-1, United States of America versus William Calhoun, Jr.

If I can have the parties identify themselves for the record, beginning with the United States.

MR. ALEXANDER: Adam Alexander for the United States, Your Honor.

THE COURT: Good afternoon.

MS. SHERMAN-STOLTZ: Jessica Sherman-Stoltz for the defendant, Your Honor.

THE COURT: Good afternoon. And good afternoon, Mr. Calhoun.

THE DEFENDANT: Good afternoon.

THE COURT: For the record, this is a video conference hearing that is being conducted pursuant to the Chief Judge's standing order relating to the pandemic.

Ms. Sherman-Stoltz, am I correct that Mr. Calhoun has agreed to proceed by video conference today?

MS. SHERMAN-STOLTZ: Yes, Your Honor.

THE COURT: All right. Is that correct, Mr. Calhoun?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. I do find it is in the interest of justice to proceed in this way, given the public

1 health risks associated with the pandemic.

2 One housekeeping matter before we get started, and that is,
3 I know there had been some issues with the attorney admissions
4 paperwork being processed through the court, given the large
5 number of out-of-district attorneys who are seeking admission.

6 My understanding is that both attorneys do now have access
7 to ECF and are admitted. Is that correct?

8 MS. SHERMAN-STOLTZ: Yes, Your Honor.

9 MR. ALEXANDER: Yes, Your Honor.

10 THE COURT: All right. And I understand that -- I
11 know the government filed a motion to unseal the case, and that
12 should have been granted by now, and all the filings should be
13 on the public docket. If not -- Mr. Hopkins, can you confirm
14 that? Have the filings been posted on the public docket?

15 THE COURTROOM DEPUTY: I can look and see, Your Honor.
16 Let's see.

17 THE COURT: All right. Well, regardless, I will ask
18 both of you to check that and make sure they are posted promptly
19 if they are not already on the docket.

20 So this is the defendant's motion. So I will start with
21 you, Ms. Sherman-Stoltz. I know a lot of your briefing and both
22 parties' briefing focuses on Mr. Calhoun's health situation.
23 And while I am not at all insensitive to his condition, I do
24 want to focus the argument on the bail reform factors. I want
25 to focus on the 3142(g) factors here primarily. I have read

1 your arguments with respect to the health issues you raise,
2 Ms. Sherman-Stoltz, and you can certainly add anything that you
3 would like to to your briefing, but I want to focus more on the
4 four factors that I have to consider.

5 Is there anything more, Ms. Sherman-Stoltz, with regard to
6 Mr. Calhoun's health situation that you would like to provide
7 beyond what's attached in the exhibits?

8 MS. SHERMAN-STOLTZ: No, Your Honor. There's nothing
9 new that has transpired since the time that I filed the motion
10 and the exhibits that has anything to do with his health. It
11 remains in the same condition it was.

12 THE COURT: All right. I will just say, the exhibits
13 are kind of difficult to interpret other than there's been a
14 series of appointments, and I don't question that he has
15 prostate cancer and has been treated for it. But in terms of
16 the nature of his treatment or the timing or anything like that,
17 it's not reflected in that paperwork.

18 MS. SHERMAN-STOLTZ: Under Exhibit A, Your Honor, it
19 does show that his next upcoming appointment for cancer
20 treatment -- for his cancer treatment is on April 12, and it
21 indicates where it is.

22 And I apologize if I'm not looking directly at the video
23 monitor but also looking at the exhibits.

24 THE COURT: Don't worry about that.

25 I appreciate his appointment in April, but I mean in the

1 sense of what his treatment entails, how long it's been going,
2 what the nature of it is, whether that can be handled someplace
3 else. All of those kinds of questions I would have if I were
4 considering releasing him on that basis.

5 But I think that the government makes a very strong
6 argument that the appropriate mechanism to consider that is
7 pursuant to 18 U.S.C. 3142(i) and whether this is an exception
8 reason. And based on the record before me now, I don't think
9 that you've established that now, not that you couldn't renew
10 the motion.

11 But for purposes of today's motion to reconsider the
12 magistrate's decision, I'm focused more -- because I don't think
13 you've met that threshold, I'm focused more on the fact that --
14 I do appreciate that you make the argument that Mr. Calhoun
15 would be more likely to abide by conditions of release so that
16 he can be treated out of custody. So I am considering the
17 argument for that purpose. But again, I am more focused now on
18 the factors as a whole. So if you could direct your argument at
19 that, that would be helpful.

20 MS. SHERMAN-STOLTZ: Yes, Your Honor.

21 If I could comment on one thing that you mentioned
22 regarding the length of his treatment is the first couple of
23 pages of Exhibit A have all those visits, and they date all the
24 way back to the beginning of his treatment. So that would be
25 the starting point of his treatment that he began receiving for

1 his prostate cancer upon his diagnosis, and that goes back to
2 October 2nd, it looks like, of 2019. So that would be the
3 starting point and then through current and then the upcoming
4 appointment of April 12th, 2021.

5 THE COURT: All right.

6 MS. SHERMAN-STOLTZ: Sorry. I'm going to my motion
7 here so that we can address the rest of the argument towards
8 what Your Honor has requested.

9 Your Honor, our position -- and I don't know procedurally
10 if you want me to go specifically through my motion or having
11 already seen the government's opposition if you want me to
12 direct the majority of my argument also incorporating the
13 government's opposition.

14 THE COURT: That would be most helpful. The parties
15 should assume I've read all of the filings and exhibits. So it
16 would be most helpful if you respond to some of the points the
17 government raises.

18 MS. SHERMAN-STOLTZ: Absolutely.

19 One of the factors that Your Honor has to consider is, you
20 know, obviously violence of the defendant, danger, threat to the
21 community. Mr. Calhoun's history, lack of criminal history, his
22 Georgia Bar membership responsibility that he's in good standing
23 show a clear respect and followance of the law.

24 The government addresses firearms and the amount of
25 firearms that he had. But we would again direct Your Honor to

1 the fact that those firearms, had they been a concern at the
2 time of his first bond hearing and the pictures that were taken
3 that were presented, this is no longer a concern that the Court
4 should have because they have all been confiscated. They have
5 been taken from his home. His business and his sister's home
6 was subject to search warrants. And all of those items were
7 removed. So he doesn't have any access to firearms.

8 As we provided information in our motion, there's two
9 places where he could reside where he would feel safe, and he
10 doesn't have access to firearms there as well.

11 All of the affidavits that we supplied, Your Honor, show --
12 and there's a voluminous amount of them where people are talking
13 about his character, his kindness towards others, again his lack
14 of any type of harm or violence towards anybody. He has
15 committed his life to helping others, particularly as a criminal
16 defense attorney, to helping those that are in less fortunate
17 positions than he is.

18 There's been nothing in his life and nothing that the
19 government has pointed out that shows any type of a pattern or
20 history or violence or danger to the community, anything that
21 has been acted upon, anyone that has come forward and indicated
22 that they have been harmed or hurt by him.

23 The government is relying upon for the bulk of their
24 argument a exhibit of screen shots of alleged social media
25 posts, various social media posts. And Your Honor --

1 THE COURT: Sorry to interrupt, Ms. Sherman-Stoltz.
2 But do you dispute that those are Mr. Calhoun's social media
3 posts?

4 MS. SHERMAN-STOLTZ: Yes, Your Honor, we do, and we
5 dispute that they have not been altered in any way. Those are
6 not authenticated.

7 THE COURT: What evidence do you have to support that
8 that's the case?

9 MS. SHERMAN-STOLTZ: So Mr. Calhoun's social media
10 platforms have all been shut down at this point. But he has
11 seen the exhibits, and he has indicated in numerous ones of them
12 that that's not what he posted, that's not what he said. The
13 context has been changed or words have been changed.

14 But without search warrants coming forward with the actual
15 authenticated and with the appropriate chain of custody
16 evidence, without having those documents at this point, all we
17 can say to the Court is that those that have been presented to
18 you are not authenticated. Those are screen shots that were
19 taken by one individual, and he posted them on his Twitter feed,
20 and that's where the government obtained them from. No chain of
21 custody.

22 THE COURT: Let me drill down on this a bit. I get
23 your point that they have not been authenticated to date. But
24 are you also affirmatively stating that these are not his posts,
25 he did not state these words? Is that your proffer here?

1 MS. SHERMAN-STOLTZ: I can't say that for all of the
2 screen shots. I can say that for some of the screen shots
3 Mr. Calhoun is indicating they are not correct.

4 THE COURT: Let me ask you about one of those. What
5 about the statement he made after he returned to Georgia where
6 he said something along the lines of "we brought the government
7 to its knees with no weapons. Now we're all going back armed
8 for war, and the deep state is about to get run out of D.C."?
9 Is that one he contests as not being one of his statements?

10 MS. SHERMAN-STOLTZ: Yes, Your Honor, he is contesting
11 that the -- I guess you could say the dramatization of the
12 events that occurred are not accurate as he had posted them.

13 THE COURT: So he did not post those words?

14 MS. SHERMAN-STOLTZ: Correct, Your Honor, no, not
15 those exact words, he did not. And that's what he's indicating,
16 that they have been altered. But we can't do side-by-side
17 comparisons at this point in time because his social media
18 platforms have all been, you know, shut down and restricted,
19 closed.

20 THE COURT: And do you think they've been altered by
21 the government or --

22 MS. SHERMAN-STOLTZ: No, Your Honor, we're not
23 suggesting that they've been altered by the government. These
24 were retrieved by another individual, another individual who has
25 spent a good amount of time targeting and harassing Mr. Calhoun,

1 making it a point to, you know, reach out to him or poke at him
2 and then collect these screen shots, compile them over a period
3 of time, and then repost them in a manner to continue to harass
4 him and defame him.

5 THE COURT: Do you have any evidence to support that
6 proffer?

7 MS. SHERMAN-STOLTZ: Just the evidence that my client
8 has indicated that they are not --

9 THE COURT: He's not testifying. Do you have any
10 evidence that you can present here?

11 MS. SHERMAN-STOLTZ: I don't have any of those
12 original posts, no, Your Honor.

13 THE COURT: Or any other evidence that would support
14 your representation here?

15 MS. SHERMAN-STOLTZ: No, other than having my client
16 testify to that. If Your Honor would -- if that's what Your
17 Honor would like, he is prepared to do that.

18 THE COURT: All right. Is that true for the
19 statement "crazy Nancy probably would have been torn into little
20 pieces but she was nowhere to be seen"? Did he write that?

21 MS. SHERMAN-STOLTZ: I'm scrolling to it. I'm sorry,
22 Your Honor.

23 I don't have a specific indication that that is not
24 accurate, but that's something again I can address with my
25 client under oath.

1 THE COURT: Well, would you like to call your client
2 to the stand?

3 MR. ALEXANDER: Your Honor, I apologize for
4 interrupting. May I be heard just very briefly?

5 THE COURT: Sure.

6 MR. ALEXANDER: I just want to note for the record
7 before Mr. Calhoun is potentially sworn under oath and offers
8 testimony under oath that there's an *Atlanta Journal-*
9 *Constitution* article that I should have included, I suppose, as
10 an exhibit dated January 8th, 2021, that describes an interview
11 with Mr. Calhoun and specific references to his social media
12 posts that are -- that were used as exhibits at Mr. Calhoun's
13 initial detention hearing and including admissions regarding
14 Mr. Calhoun's conduct on the day of January 6th in the interview
15 to the *Atlanta Journal-Constitution*, as well as being asked
16 about certain tweets, including the one referencing hanging the
17 current president where Mr. Calhoun is quoted as saying "Trump
18 voters say that all the time. We're just ornery," and "defended
19 statements" -- I'm quoting now, "defended statements he made
20 about civil war as heated political rhetoric, not actual
21 warnings."

22 There's no indication in this article where Mr. Calhoun is
23 quoted extensively that any of the social media posts that are
24 referenced were doctored or altered or anything other than his
25 words, just a question of, I suppose, the intent behind them.

1 So I just wanted to bring this to the parties' attention,
2 obviously, before Mr. Calhoun was sworn.

3 THE COURT: Ms. Sherman-Stoltz, would you like a
4 moment to discuss with Mr. Calhoun whether he does, in fact,
5 want to testify here today in a break-out room? I want to make
6 sure he's thought this through and that he is prepared to
7 testify, because as he well knows the statements he makes here
8 could be used against him.

9 MS. SHERMAN-STOLTZ: Yes, Your Honor. That would be
10 helpful. Thank you.

11 THE COURT: So Mr. Hopkins, I'm going to ask that you
12 place Ms. Sherman-Stoltz and Mr. Calhoun in a break-out room,
13 and I am going to sign off briefly. Let me know when you're
14 available.

15 THE COURTROOM DEPUTY: Absolutely, Your Honor.

16 THE COURT: Thank you.

17 (Defendant and defense counsel conferred.)

18 THE COURT: All right. Ms. Sherman-Stoltz, are you
19 ready to proceed?

20 MS. SHERMAN-STOLTZ: Yes, Your Honor.

21 THE COURT: All right. And does Mr. Calhoun still
22 seek to testify?

23 MS. SHERMAN-STOLTZ: Yes, he does, Your Honor.

24 THE COURT: All right. If the courtroom deputy could
25 please place the defendant under oath.

1 WILLIAM MCCALL CALHOUN, JR., WITNESS FOR THE DEFENSE, SWORN

2 DIRECT EXAMINATION

3 BY MS. SHERMAN-STOLTZ:

4 Q. Mr. Calhoun, the Court was previously discussing and asking
5 questions regarding specific posts that it's my understanding
6 that you have seen. I know you don't have a copy of them right
7 in front of you, but you have seen the posts that the judge has
8 indicated; is that correct?

9 A. That's correct. It's been a few weeks since I've seen
10 them, but I did see them when I was at court in Macon.

11 Q. And Her Honor asked a question regarding the posts that
12 were specific to the events surrounding January 6th. Do you
13 recall those posts?

14 A. Yes.

15 Q. And what you posted about, the events of January 6th, what
16 forum did you post those on?

17 A. I think that was on Parler. It would have either been on
18 Parler or Facebook. Actually, I think I was restricted on
19 Facebook. So it was probably on Parler actually.

20 Q. And can you describe for the Court the nature in which you
21 wrote those posts, how you were writing about the events?

22 A. Yes. I was writing like a -- kind of like a narrative.
23 Often I used "we," you know, "we did this," "we saw this." I
24 wasn't literally meaning that I did these things or was, you
25 know -- like for example, the post about coming back, what was

1 it, a week later armed or something of that nature, the one that
2 the Court asked about, all right, I was not saying we are, in
3 fact, coming back a week later armed for war or something like
4 that. I was recording what I was hearing on the street from the
5 crowd. So when I said, it was like the word on the street is
6 we're coming back. Meaning, what I meant was the crowd is --
7 different people in the crowd at different times, different
8 places were talking about coming back armed. I was not talking
9 about me personally coming back armed, but just that that is
10 what I was hearing being discussed. So that's one example.

11 I mean, I would not -- I did not go to D.C. armed. I would
12 not go to D.C. armed. And I mean, I'm a law-abiding citizen. I
13 did -- I admitted that, you know, I walked in an open door at
14 the Capitol while the police watched, but I didn't touch
15 anything or anybody, you know.

16 Q. Mr. Calhoun, if I could kind of direct just a little bit
17 better this line of questioning.

18 A. All right.

19 Q. Now, the reference that the judge made towards the comments
20 about Nancy Pelosi, and I will read it to you as has been
21 provided in the exhibit from the government. The specific
22 question was, "Crazy Nancy probably would have been torn into
23 little pieces but she was nowhere to be seen."

24 So is that something that you wrote and, if so, in what
25 context?

1 A. Yes, I did write that, but you've got to understand, I had
2 a fairly significant following on social media, and that was a
3 satirical reference to earlier comments I had made in the weeks
4 or months prior to January 6th where I had commented on more
5 than one occasion that crazy -- or Nancy -- I don't know if I
6 called her crazy Nancy, but that Ms. Pelosi would probably be
7 ripped -- torn into pieces, torn into little pieces by an
8 enraged Antifa mob when they realized that she had betrayed
9 them. So I had made satirical comments earlier about an Antifa
10 mob tearing Nancy into little pieces or whatever when they
11 figured out what she had done to them. So my comment that day
12 at the Capitol was a reference to that.

13 If you had followed my posts, you probably would have known
14 or maybe might have picked up that that was just a satirical
15 reference, and although at this time it was made from the
16 standpoint of the Capitol mob may have done it. But in truth,
17 the Capitol mob was not going to tear anybody to pieces. The
18 mob, if you can even call it a mob, everybody around me at the
19 time I was in the Capitol was very respectful. They were not
20 doing property damage. It was -- people were actually, you
21 know, yelling out "don't touch anything," you know, "don't mess
22 with anything." That's what was happening around me when I was
23 in there.

24 Q. And is it correct that that would relate to a comment that
25 you made on how the Capitol rioters were admiring the amazing

1 artwork? Did you make that comment?

2 A. Yes. That photograph, I took that photograph. That was on
3 the front page of the *Atlanta Journal-Constitution*. You can
4 tell by the statement people -- you can tell from the photograph
5 that people are not running around frantically like it's a field
6 day or something. They're standing there quietly looking at the
7 artworks. Their legs aren't moving. They're standing still.
8 And that's what was happening. It wasn't -- it was very -- it
9 was very -- it was nonviolent. It was a very intensely, you
10 know, patriotic moment. I mean, I certainly, you know -- it may
11 not have been the best idea to go into the Capitol. We
12 didn't -- we could have -- if we were trying to do damage and
13 hurt, we could have done millions of dollars' worth of damage to
14 artwork if that was what our intention was, but that was not our
15 intention. We didn't do anything like that.

16 Q. And Mr. Calhoun, by "we," who are you referring to?

17 A. Well, all of -- that crowd of protestors who were -- I
18 could observe who were there around in my immediate, you know,
19 presence inside the Capitol. It's -- I mean, that's what I saw.
20 Okay? I mean, when I -- I was only in there for a brief period
21 of time, and when I was trying to leave, it basically took 15 or
22 20 minutes to get out because there were so many people crushing
23 to get in. It took a while just to get out, there were so many
24 people trying to come in.

25 But I did eventually get out, and I didn't see anybody get

1 shot. I didn't see anybody get, you know, assaulted in any, you
2 know, aggressive manner. I think I saw somebody having a heart
3 attack early on outside, but I didn't -- I really can't -- they
4 were yelling for EMTs. I really couldn't even see that. I
5 mean, I, you know --

6 Q. Mr. Calhoun, I want to go back real quickly. You made a
7 comment regarding your followers, that you were writing to your
8 followers. Now, how many followers would you say that you had
9 that were following you for, you know, these type of purposes,
10 you know, to hear your comments on political purposes or things
11 of that nature?

12 A. I think on Facebook I had slightly less than 5,000. I'm
13 not sure. My Parler account was relatively new.

14 I will give you an idea of how bad it was, just to give you
15 an idea. On Facebook, after the Capitol event on the 6th --
16 this is probably on about January 8th -- a friend of mine
17 posted -- I go by my middle name, McCall. So a friend of mine
18 posted "McCall Calhoun for president" on Facebook, and he got
19 banned for 30 days for doing that.

20 So obviously, I had some people -- you know, my name was, I
21 guess, known on Facebook. See, what happened was, I was --

22 Q. Mr. Calhoun, I want to try to focus your testimony right
23 now on the questions that the judge had asked and the exhibits
24 that were provided by the government.

25 Now, you're aware of the screen shots that were, I guess,

1 taken from various social media platforms of yours and then
2 posted on another individual's Twitter feed; is that correct?

3 A. Apparently so. I had -- I didn't know -- well, I knew I
4 was being -- I knew I had people that hated me on social media.
5 I didn't know I was being cyber stalked for months on end and
6 they had been putting together this information that they had
7 ready. It was -- part of it is edited.

8 Now, this is very specific. There is an exhibit. I don't
9 know the number. But it's the one that refers to the D.C. gun
10 ban. I think this is on Parler. And it had -- the original
11 post had three sentences in it. The government exhibit only has
12 two sentences, and the middle sentence is removed, and it
13 drastically changes the message. Okay? The message that is in
14 the exhibit goes something like this. It says that "the D.C.
15 mayor has banned guns for January 6th," period. Next
16 sentence, "Very illegal," period. And that's conveying the
17 message that I am calling the D.C. gun ban is illegal. That is
18 completely fabricated. So my post as originally posted read
19 like this: "The D.C. mayor has banned guns for January 6th.
20 However, guns are already highly illegal or already banned in
21 D.C. Very illegal."

22 Meaning, I was just saying that the gun ban was redundant
23 because guns were already banned. Why ban them again because
24 they're already banned. That was my message. It wasn't I was
25 calling the ban very illegal. But that's one example of a post

1 that was edited.

2 Now, the other post that we were talking about where I
3 said "the word on the street is we're coming back armed for war"
4 or whatever it was, I think some of that was removed. I'm not
5 100 percent certain. But I know that the context, I've already
6 explained that that is just what I was reporting I had heard. I
7 was not advocating for that in any form or fashion.

8 The additional context on this, though, on why the person
9 would have been doing this --

10 Q. Real quickly, Mr. Calhoun, as far as context is concerned,
11 when you were speaking about -- well, writing about people
12 indicating that they were going to be coming back, had you
13 prefaced your statements by saying anything along those lines of
14 "this is what I'm hearing," "this is what people are saying"?
15 Had you conveyed it in a manner in which people knew that you
16 weren't saying it but that you were writing what you were
17 hearing?

18 A. Right. I think I said, "The word on the street is," but
19 anyway, that's what I was intending to convey, because that's
20 literally what the word on the street was. I heard several
21 people in about four or five different conversations that I was
22 just -- was eavesdropping on where people were saying we're
23 coming back, you know, next week with guns or whatever, we're
24 coming back next time, we're coming armed. That's what people
25 were saying. I wasn't planning it. I was just reporting what I

1 was hearing people saying on that.

2 But I think, you know, it is important to put some context
3 into why would somebody -- who would go to the trouble to cyber
4 stalk me for weeks and months on end in order to put together
5 this thing.

6 And I think it is important to know that I was a
7 Democrat -- I ran for office as a Democrat. I ran for district
8 attorney in Southwestern Judicial Circuit as a Democrat back in,
9 I think it was, 2000. All my career I have been a Democrat. I
10 voted for Hillary Clinton in 2016. I voted for Barack Obama
11 twice. And then I -- and I was vocal against Trump early on.
12 You can go back to Facebook and see that for the first two years
13 he was in office.

14 But then at the end of 2019, I started reading these
15 Democratic gun bills that were coming out of Virginia, and I
16 thought if that becomes law, me and all of these farmers I know
17 are going to go to prison. And then Hank Johnson of Georgia
18 filed H.R. 5717 in March of 2020, and I'm reading that going,
19 you know, if that becomes law, all these farmers I know and
20 their children and their grandchildren are going to be at risk
21 of going to federal prison.

22 And so I started defending the Second Amendment on
23 Facebook. And I immediately got savaged and was called a white
24 supremacist. I was called this. I was attacked. And of
25 course, my natural reaction is to push it further. So I was

1 going full bore pushing First Amendment rights. People were
2 being locked down. They were being told in certain parts of the
3 country and Canada that they couldn't go to church but they
4 could go to strip bars.

5 I had no tolerance for that. I had no tolerance for these
6 Democrat gun laws because they don't address the gun violence
7 problem. They address guns that aren't doing any crimes. We
8 can argue the policy, but the thing is, I was a Democrat lawyer
9 who flipped very vocally to the conservative side, and they
10 hated me for that. So that's part of what's going on here.

11 Q. In any of your posts, Mr. Calhoun, did you make any direct
12 threats towards anyone or threaten harm to anyone?

13 A. No. I have threatened no one. I mean, I have not
14 threatened anyone. I have not advocated the overthrow of the
15 government. I have not -- I have not -- I've made no threats.
16 I've been very meticulous over the past 30 years as a lawyer not
17 to commit felonies, including terroristic threats. I am not
18 threatening anyone, and I have not threatened anyone.

19 Q. So if the government had any posts showing that you
20 threatened someone or some individuals, would your
21 representation be that that is not accurate and that may have
22 been altered by this individual that you said was stalking you?

23 A. Well, there was more than one, I want to be clear about
24 that, that was stalking me. But I did not threaten anyone.
25 Now, I have made -- if you recall, last summer and into the

1 fall, there was a national debate going on in this country
2 whether Antifa or Black Lives Matter had the right to engage in
3 what I think they called therapeutic retribution, meaning we're
4 oppressed, so therefore we should be able to burn down sections
5 of cities or burn down a federal courthouse or whatever or burn
6 down the house with you in it because that will make us feel
7 better. Of course, there is no legal doctrine that justifies
8 burning down anything like that.

9 And all of my comments, I made comments in the realm of
10 self-defense. In other words, if a bunch of Communists showed
11 up at my house trying to burn it down, I will take care of the
12 problem, you know. If the police can't stop them and the
13 National Guard can't stop them, then me and the farmers, we'll
14 stop them, basically trying to deter these people from bringing
15 their looting and burning down to my part of Georgia, which it
16 has not come there yet. It's kind of a powder keg where
17 Americus, Georgia, is, which is why I'm not living there.

18 But the idea was to deter these people. There is no right
19 to burn down somebody's house because you feel oppressed. I'm
20 sorry. You cannot lay siege to a federal courthouse. I know --

21 Q. Mr. Calhoun, I would like to ask you a question about that.
22 At the time that you wrote those statements, were you yourself
23 receiving any type of threats of harm or -- for your opinion,
24 for what you were saying?

25 A. I was not receiving -- well, a threat of physical harm, no.

1 There was a movement to -- they were going to try and have me
2 disbarred. The sheriff is a good friend of mine, the sheriff of
3 Sumter County, Eric Bryant, and he was like, "Boy, they want you
4 searched. They want you detained. They want you arrested.
5 They want you in jail." And it was all because I was defending
6 the First Amendment and the Second Amendment.

7 And I know that they reported me to the FBI, to the GBI, to
8 the chief of police, to the state bar, although I never heard
9 anything from the state bar. There was definitely, I will call
10 it, a plan to get me. Of course, I thought, and I still think,
11 even though I'm sitting here for what I said, I still am a firm
12 believer that you cannot be imprisoned or disenfranchised in
13 this country because of political speech. And I'm certainly --
14 right now, I'm a little -- it shook me to my core to be held
15 here for my political positions, which is why I'm here.

16 The person that I went to the Capitol -- that I rode to
17 Washington with on January 6th, he's not in jail. He got
18 arrested. He was released within 24 hours. He doesn't even
19 have a job. I have a law practice that is going down the tubes.
20 I've got responsibilities. I need to deal with these people
21 that do not deserve to be languishing. For example, I have one
22 client who -- one of my sisters was trying to get lawyers to
23 substitute in or maybe get a public defender or whatever if they
24 needed it. I've got one client who he refused a public
25 defender. He is going to sit in jail and wait until I get out

1 of jail to go back to Georgia to represent him.

2 So I mean, I will leave that right there. There is a lot.
3 There's a lot here. I have been a lawyer for --

4 Q. Mr. Calhoun --

5 THE COURT: Mr. Calhoun, wait for the question,
6 please.

7 BY MS. SHERMAN-STOLTZ:

8 Q. Sorry. I know there's a little bit of delay and that when
9 I start to say something that I was interrupting you. But
10 again, I want to try to keep your testimony just having to do
11 with what the judge's concerns were and what she initially posed
12 and then also what you've indicated and what you've indicated to
13 the Court that not all of those screen shots that they have, to
14 your recollection -- and you mentioned one specifically -- are
15 accurate to what you posted. Is that correct?

16 A. That one has absolutely been edited to change the entire
17 meaning of my post. I can't state under oath that the other
18 ones were edited, although I don't know -- I haven't seen them.
19 I would have to really -- I'd have to compare them. I'd have to
20 look at them.

21 But one thing is for certain, they contain none of the
22 conversations. I'm replying in most of those posts. You can
23 read those posts and tell I am replying to comments that have
24 been made to me. Okay? Where are those comments? Why am I
25 saying what I said? I'm saying those things in response to

1 things that have been said to me.

2 And again, you know, this was a lot of these people that
3 were saying if you defend the Second Amendment you're a white
4 supremacist. I had two lawyers, of all things, telling me that
5 early on in this whole saga.

6 Q. And Mr. Calhoun, were the majority of these posts prior to
7 you even having decided to go to Washington, D.C., on
8 January 6th?

9 A. Absolutely. I didn't know I was going to D.C. If you
10 remember, we had this chain of events where we had the Texas
11 Supreme Court case which the Supreme Court could have really
12 diffused the situation, and they just looked at the case but
13 they didn't act. And Georgia was a firestorm of election fraud
14 allegations, and it was kind of slow moving. Some of the other
15 states were slow moving. But there were legislators who had
16 written to Vice President Pence, and they asked him -- from the
17 swing states and different numbers depending upon which state,
18 but they basically told Pence, "We've got problems with our
19 electoral votes. Send them back to us. Let us fix them. And
20 then we will send them back to you." Of course, Pence refused
21 to do that.

22 That was the trigger, that and some tear gas from the
23 police, as far as I can tell. Those were the trigger points
24 that made the crowd rush up those steps and go into the Capitol.

25 Now, I was across the lawn. You can see -- now, this is on

1 Facebook, I think, Your Honor, or Parler, one or the other.

2 It's when I was across the lawn from the steps that go back
3 towards the Washington Monument, those steps right there with
4 the scaffolding. I was across the lawn, and I posted, "It looks
5 like we're going in." Again, I'm using the narrative form
6 saying, "It looks like we're going inside." Again, at the time
7 I didn't mean necessarily as in me, but I could see from 100
8 yards away the crowd was about to go up those steps.

9 And there were no police there to speak of. I mean, the
10 few that were there ran off. My friend and I went over there to
11 check it out. By the time we got there, the crowd was rushing,
12 was already rushing up the steps, and the police were gone.

13 And so --

14 Q. And Mr. Calhoun --

15 A. -- that was a spontaneous thing is what I'm saying. The
16 whole -- there was no planning, nothing about going to the
17 Capitol on my end of things. I mean, it was all spontaneous. I
18 just followed --

19 Q. Mr. Calhoun --

20 THE COURT: Mr. Calhoun, you've got to wait for a
21 question.

22 BY MS. SHERMAN-STOLTZ:

23 Q. Mr. Calhoun, let's refocus. This is about bond
24 reconsideration. We will have an opportunity to be able to give
25 information regarding your charges, but this is specifically

1 with the danger to the community, the safety of the community,
2 threats of violence, and things along those lines. So --

3 A. All right. If I could just finish my answer to your
4 question, I filed for a leave of absence some time in late
5 December for January 5th, 6th, and 7th. Okay? That was when I
6 made the decision to go to Washington. I think it was on
7 December 28th when I filed it. So that's how late my actual
8 "I'm going to Washington" decision was made.

9 I'm sorry. I forgot what your last question was.

10 Q. Well, just as a reminder of what we're focusing on for bond
11 reconsideration, what the judge said at the very beginning.

12 MS. SHERMAN-STOLTZ: And Your Honor, I have
13 additional, I can say, arguments as to your, you know, beginning
14 directive of how to focus the proceedings. But I understand
15 that since I've called a witness, that the government attorney
16 may have questions. So I would like to see how you would like
17 to proceed on that, Your Honor.

18 THE COURT: Of course, the government attorney will
19 have a chance to cross-examine Mr. Calhoun. But I want to make
20 clear to you, Ms. Sherman-Stoltz, to the extent you want to ask
21 Mr. Calhoun questions regarding the health condition or anything
22 else that I haven't focused on, I'm not in any way limiting the
23 evidence you can produce. I was just for purposes of argument
24 trying to direct you to what I'm most interested in. But by all
25 means, feel free to probe whatever other areas you would like to

1 probe.

2 THE DEFENDANT: I can summarize my medical condition.

3 THE COURT: You need to respond to questions your
4 attorney asks.

5 BY MS. SHERMAN-STOLTZ:

6 Q. Mr. Calhoun, your medical diagnosis of having prostate
7 cancer, when did that take place? When did that occur?

8 A. I believe that was back in April of 2019.

9 Q. And have you been receiving care for your cancer, care and
10 treatment ever since?

11 A. Yes, I have. They said at first they were going to watch
12 it. I said, I'm like, "Are you sure?" And they're like, "Yes,
13 we're going to watch it." That was back when I was first
14 diagnosed.

15 Then I went to Emory, because Emory is the best cancer
16 treatment place in the state. And I got to Emory a little bit
17 later. It took a few months because of the COVID thing, and I
18 was a little delayed from that. But I got to Emory, and
19 basically after I had had the diagnosis for a year, at Emory, my
20 doctor said that they're not watching it anymore, they're going
21 to do something. And they gave me three options.

22 Q. And by that, you mean -- is it correct to say "do
23 something," is that treatments that you were being given?

24 A. Correct. It was getting bigger. The cancer was growing.
25 So I had three different options. One of them was removing the

1 prostate. One was 28 days' worth of radiation. The other one
2 was two days, separated by a couple of weeks, of very intense
3 radiation. All had the same chance of success. So I opted for
4 the two-day intense radiation. I had that done. I want to say
5 that was maybe in September and October of 2020. The medical
6 records will reflect exactly when.

7 I had a follow-up in December. And then basically they
8 said that it will be -- we want you to come back in April, it
9 will take that long for you to heal up, and then we can assess
10 everything at that point.

11 So that's what I'm due for in April is a follow-up to the
12 cancer surgical procedure to see if -- what my status is and
13 whether I'm -- do it or got something else that needs to be
14 done. I have no idea.

15 But I don't really think that the -- I'm very uncomfortable
16 with the idea of changing horses midstream in the middle of this
17 cancer thing. There's no cure for prostate cancer. You either
18 catch it in time or you don't. And I think they caught it in
19 time. They should have. But that's not for me to say. I don't
20 know that. I have to go back up there to find out.

21 Q. Is it your understanding that the appointment that's
22 supposed to occur in April is to see how the effects of the
23 high-intensity radiation treatment affected the cancer?

24 A. Correct. They said it would take that long for me to fully
25 heal up, and then they can -- they've got some testing they can

1 do that will be accurate once you're healed, you know.

2 Apparently, you have to get healed up to get the accurate
3 testing and then go from there.

4 Q. And have you been under the care of the same doctor at
5 Emory University?

6 A. Yes, Dr. Ogan. He's a urologist.

7 Q. Okay.

8 A. O-g-a-n is how you spell his name. I think Kenneth is his
9 first name.

10 Q. Mr. Calhoun, you're aware of the firearms that were
11 confiscated from you by the government; is that correct?

12 A. Yes, yes, all legal.

13 Q. Are those the only firearms that you own and possess or had
14 in your home?

15 A. There's an old antique gun barrel, 16-gauge, and there's an
16 old antique single-shot .410 that I believe are at my sister's
17 house in Andersonville. But other than that, they should have
18 gotten everything. I believe they got it all. Two of those
19 guns I inherited from my father, you know. There were two other
20 shotguns, nothing fancy, just regular shotguns. And then I had
21 three AR-15s, an AR-10, but again all legal.

22 When they came into my house -- they came to Macon and
23 said, "Do you have any firearms?" And I said, "Yeah, right
24 there in the bedroom. Don't shoot the dog." And there was no
25 problem. I was totally cooperative with them.

1 I'm not -- again, I keep going back to, I am a lawyer. I'm
2 not going to commit a felony, and I am not going to -- I've got
3 way too much to lose here. I've got more to lose than most of
4 these defendants. And already my law practice is getting
5 dangerously in trouble at this point. I've got continuing legal
6 education I need to do this month. I'm not going to jeopardize
7 my law license by violating the Court's bail order or doing
8 anything else that is illegal that would get me in trouble.

9 Like I said, I think this case can be resolved --

10 Q. Mr. Calhoun, we'll talk about the resolution of your case
11 at another time.

12 A. But I'm just saying --

13 THE COURT: Mr. Calhoun, you have to stop. There has
14 to be a question posed for you to answer.

15 THE DEFENDANT: I'm sorry.

16 BY MS. SHERMAN-STOLTZ:

17 Q. I'm just making sure that while I have you under oath prior
18 to the government getting an opportunity to question you that
19 there is nothing else I want to ask you.

20 A. One other thing --

21 THE COURT: Mr. Calhoun, you may not speak --

22 THE DEFENDANT: I'm sorry, Your Honor. It's hard
23 to --

24 THE COURT: I understand that you want to be your own
25 lawyer, but you can't in this setting.

1 MS. SHERMAN-STOLTZ: Mr. Calhoun, I don't have any
2 additional questions for you that I think would be pertinent to
3 the purposes of this hearing.

4 THE COURT: All right. Mr. Alexander?

5 MR. ALEXANDER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. ALEXANDER:

8 Q. Good afternoon, Mr. Calhoun. My name is Adam Alexander. I
9 am an Assistant United States Attorney in Alaska detailed to
10 D.C. to assist with your case and some other cases.

11 Before I start, I know that you know as a practicing
12 attorney as well that I have an ethical obligation as an officer
13 of the court to give what's called a "target warning" just to
14 advise, and I certainly hope that it's not the case, that you
15 not make any false statement as you are under oath.

16 Okay, sir? Do you understand that?

17 A. Yes.

18 Q. Okay. And the federal statute, United States Code Section
19 1621, criminalizes anybody having taken an oath and making any
20 declaration to any fact that you know is not true. Okay?

21 It's my hope and my intention to avoid any situation, I'm
22 not going to ask you any questions that are tricks. If at any
23 point you want to talk to your defense attorney, please let me
24 know. Okay? It's a little awkward because we're all on video
25 here. In normal times, you would be able to lean over and talk

1 to your attorney or take a break. So let me know or let me know
2 if any of my questions are confusing or if you can't hear me.

3 Sir, just because there appeared to be a little bit of
4 confusion, you testified that you were at the Capitol on
5 January 6th. That's correct; right?

6 A. Correct.

7 Q. And I believe it was your testimony earlier that you had
8 put in for leave on or about December 28th to take the 5th, 6th,
9 and 7th off?

10 A. I believe, yeah, it was around -- it was at the end of
11 December, and it was on very short notice, you know, for a leave
12 of absence, but that was actually when the decision was -- I was
13 going at that point, whenever that got filed.

14 Q. Sir, it sounded like that was in reaction to some of the
15 events that were occurring around the election. You talked
16 about a case in Texas and maybe cases in Georgia as well.

17 A. The Electoral College process. December 12th was a big
18 deadline, I think, on the Electoral College. Of course, then
19 there was -- Christmas was there. That sort of, I guess, took
20 things out of focus for a minute. But it wasn't -- I can't
21 remember -- there may have been some early discussion in
22 December about Trump having a rally on the 6th. Again, you
23 know, which I was in favor of, of course, but when I actually
24 knew I was going, I mean, it was when I filed for that leave of
25 absence.

1 Q. Understood, sir. And you had some concerns at the time
2 regarding the legitimacy of the election, it sounds like from
3 your testimony?

4 A. Yes.

5 Q. And sir, it sounds from your testimony like you had been
6 posting on your social media accounts, Facebook, as well as
7 Parler?

8 A. What --

9 Q. Sorry. To be clear, I'm not asking about specific posts
10 yet. I'm just saying --

11 A. I had a Facebook account. I started getting -- there was
12 obviously -- it was obvious to me anyway. There was a lot of
13 censorship going on on Facebook. And a bunch of us who kept
14 getting, you know, restricted for talking about -- for example,
15 if you mentioned Hunter Biden, you could get restricted. If you
16 mentioned, you know, Pelosi, you might get restricted.

17 So we started going to alternative platforms. At first, I
18 went to Twitter. I only was there about a week, and at that
19 point I was kind of frustrated. I did my level best to get
20 kicked off Twitter by posting inflammatory comments, which I
21 did. I've never been able to get back on that. And then I went
22 to Parler, and I think that's it.

23 Q. So, sir, I know it's hard because you're in custody
24 currently and you don't have these exhibits in front of you, but
25 I do want to try to clarify what you believe may have been

1 edited or changed in terms of the government's exhibits. Okay?

2 You had a -- following your return to Georgia, sir, do you
3 remember being interviewed by the *Atlanta Journal-Constitution*?

4 A. Yeah. They got some things wrong. I can't remember
5 specifically. Like for one thing, they said that I broke into
6 the Capitol. That was totally made up. I didn't break into the
7 Capitol. He was trying to spin things unfavorably against me.
8 He paid some lip service towards trying to be balanced. But
9 none -- that article, you know, it was not entirely accurate. I
10 can't give you specifics because I can't remember the article.
11 It was a long time. He did use my photograph. I took that
12 photograph that was in it. And he did say that we entered the
13 Capitol and we entered the Capitol for love of country. I did
14 say that.

15 Q. Sir, I'm going to ask you some specific questions about the
16 article. It quotes you as saying -- or it quotes one of your
17 Parler posts. "The deep state cannot stop us. They learned
18 that today when we stormed the Capitol and took it. The word is
19 we're all coming back armed for war."

20 You don't dispute the accuracy of that post in the article;
21 is that correct?

22 A. I think that should say "the word on the street" is my
23 recollection.

24 Q. Okay. But otherwise, it's accurate; correct?

25 A. What was it?

1 Q. You're quoted as saying, "The deep state cannot stop us.
2 The learned that today when we stormed the Capitol and took it.
3 The word is we are coming back armed for war."

4 That quote was also in an exhibit that was used against you
5 in your detention hearing on January 21st. Sir, I am just going
6 to continue and give you a couple other things and an
7 opportunity to respond.

8 A. You want to know if that is accurate?

9 THE COURT: Mr. Calhoun, wait for the question, sir.

10 BY MR. ALEXANDER:

11 Q. So sir, it then continues to quote you directly as stating,
12 "This was civil disobedience. Anyone who claims it was anything
13 other than civil disobedience was not there. They did not see
14 it, and they do not know." It quotes you as referring to the
15 riot that left five dead, including a Capitol police officer and
16 a Kennesaw woman who was crushed to death in the crowd.

17 The article continues --

18 A. The police --

19 THE COURT: Mr. Calhoun, wait for the question. He
20 hasn't finished.

21 BY MR. ALEXANDER:

22 Q. The article continues that for months prior to the rally
23 you took to social media to express your ire at Democrats and
24 Antifa and warned of a coming civil war. It's quoting a number
25 of your Parler posts. And then the article asks you about a

1 post that you made referencing hanging the current president.

2 "When asked about the tweet, Calhoun was dismissive that "Trump
3 voters say that all the time. We're just ornery.""

4 You didn't tell the journalist that any of these had been
5 made up or doctored or altered; is that right?

6 A. Any of what?

7 Q. Any of the quotes that were used, any of your prior
8 statements that were used in this article.

9 A. Yeah, I can forward you to a whole slew of Facebook posts
10 where I said something about some Democrat or Biden and then,
11 like, people go "hang him" or "give him the firing squad" or
12 whatever. It's all rhetorical hyperbole.

13 Look, why were regular, normal Americans entering the
14 Capitol? That's the question. We're not going to be turned
15 into criminals. We're not criminals. What did the government
16 do to make us enter the Capitol? That's what really I would be
17 asking. I mean --

18 Q. I'm curious. So what did the government do to make you
19 enter the Capitol?

20 A. Well, apparently, 80 percent of Republicans think they
21 stole the election.

22 MS. SHERMAN-STOLTZ: Mr. Calhoun, he's asking you
23 specifically.

24 THE DEFENDANT: That's what they did. They stole the
25 election. I think there's a mound of evidence that shows it was

1 stolen.

2 BY MR. ALEXANDER:

3 Q. Is it fair to say, sir, then, you were in the Capitol that
4 day to delay the certification of the election?

5 A. No. Look, when you -- the people -- I think 20,000 people
6 went into the Capitol that day, at least 10, not all at once but
7 10- to 20,000 people went into the Capitol, and more would have
8 gone in if they could have. You had too many people out there
9 in front of the Capitol. You probably had 100,000 of them right
10 up in front of the Capitol trying to get inside of it. These
11 people were at their utmost last moment of desperate need. The
12 government failed them. Okay? This is their belief. That
13 entire crowd had that belief. It was civil disobedience.

14 Now, I've seen the same footage on CNN of a few people
15 breaking things and that sort of thing. I didn't see that. I
16 didn't see anybody breaking anything. I know that the police,
17 from what I've been told from people who were there, and I came
18 up as it was ending, the police told these people that had heart
19 attacks from throwing flash grenades back into the crowd -- they
20 weren't even throwing them at the crowd. They were throwing
21 them back into the crowd. And they thought people who had heart
22 attacks -- I didn't see anybody assaulting. I didn't attack
23 anybody. You know what I'm saying?

24 Q. Sir --

25 A. I saw the police -- I saw people bleeding from the neck

1 where they had been shot by a pepper ball, and I saw somebody
2 who had been shot through the face with a rubber bullet. I
3 mean, you know, but none of us did anything. I'm sure you could
4 cherry-pick people there that did some violent things, but I was
5 not one of them. I am not violent, and I am not one of these --
6 Q. Sir, I just wanted to give you a chance as well to
7 address -- because I'm still trying to figure out, your attorney
8 has represented to the Court that some of these social media
9 posts that were labeled Government's Exhibit 1 through 35-A and
10 attached to the government's opposition to your bail appeal in
11 this case as Exhibit 2, there's a bunch of what look like both
12 Facebook and Parler posts.

13 You reference one in particular, sir, about banning -- D.C.
14 banning guns. That was labeled Government Exhibit 3 in the
15 original bail hearing, your detention hearing and preliminary
16 hearing that was in Georgia. It reads as follows: "Headed to
17 D.C. to give the GOP some backbone to let them know this is
18 their last chance to stop the steal or they're going to have
19 bigger problems than these coddled Antifa burning down their
20 safe places. D.C. announced it is banning guns when we storm
21 the Capitol tomorrow. LOL. Guns are already banned in D.C.
22 Very illegal. Whether the police can enforce their gun laws
23 depends on how many armed patriots show up. Ironically, in the
24 long list of firearms and weapons banned by the D.C. ordinance,
25 tomahawks are not mentioned, meaning there's no prohibition

1 against carrying a tomahawk as long as it's not used
2 offensively. The tomahawk revolution is real 1776."

3 That is your posting; right, sir? That is one you were
4 referring to?

5 A. That's more humor. I went into great detail reading the
6 D.C. list of all the weapons that are banned in D.C., but guess
7 what? Tomahawks are not banned. I didn't see a single tomahawk
8 in D.C. I didn't bring one.

9 Q. Got it. I'm just trying to understand what you did write
10 and what you didn't write, because your attorney represented
11 that there may be --

12 A. Some of this and what I said there, the part about -- the
13 first part, all right, about you're going to have bigger
14 problems, tell me which part of that is not true. Okay? Also,
15 that is the one that is missing the middle sentence. Okay?
16 It's missing the middle sentence, totally edited out. Okay? It
17 changed the entire meaning of that post. Again, it should have
18 said, "The D.C. mayor announced they are banning guns for
19 January 6th. Guns are already banned in D.C. Very illegal."
20 They took out the middle sentence to make it look like I was
21 calling the D.C. gun ban very illegal. I was not doing that. I
22 was --

23 Q. Sir, I know it's hard because you can't see this. So I
24 will move on here in a moment, but the sentence "whether the
25 police can enforce their gun laws depends upon how many armed

1 patriots show up," you wrote that?

2 A. I did write that. Because there was a question -- as you
3 know, a lot of people came with guns. I was not one of them. I
4 specifically read the D.C. ordinance, and I'm like, you know,
5 there is no way in hell I'm bringing a gun to D.C., because they
6 are so illegal here that is opening a can of worms.

7 We didn't know what was going to happen. Okay? We didn't
8 know -- I'm answering the question. We didn't know what was
9 going to happen when we got up here. I didn't know if there
10 were going to be people walking around with AR-15s. I didn't
11 know if it was going to be like it was, which was basically
12 unarmed people who still had -- there was this air of
13 determination. I can't quite, you know, impress upon you how
14 determined this crowd was. They were at their last desperate
15 moment. The country had let them down. They were there for
16 their country. I know you don't understand that, but trust me,
17 we were there for our country. That is why we were there.

18 Now, I did not tell anybody to bring guns. If anything, I
19 discouraged people to bring guns because I pointed out how
20 highly illegal they are in D.C. Now, I don't think you can make
21 a case that anybody started attacking people with tomahawks.

22 Q. Sir, that's not the question. I think you were asked
23 about -- or at least the judge, sir, asked your attorney about a
24 passage marked Government's Exhibit 5 at your detention hearing
25 that is a part of Government's Exhibit 2 for purposes of this

1 hearing where you write, "And get this, the first of us who got
2 upstairs kicked in Nancy Pelosi's office door and pushed down
3 the hall towards her inner sanctum, the mob howling with rage.
4 Crazy Nancy probably would have been torn into little pieces,
5 but she was nowhere to be seen. Then a swat team showed, and we
6 retreated back to the Rotunda and continued our hostile takeover
7 of the Capitol building."

8 You did write that section; correct?

9 A. Now, you know good and well that none of that happened.
10 You have seen the video. I was --

11 THE COURT: Mr. Calhoun, answer the question.

12 THE DEFENDANT: Yes, I think I did write that. I was
13 trolling my Facebook stalkers. Again, you've got to understand
14 the humor here. These people are so vicious. They are so
15 communistic. They are so -- they're the cancel culture. Yes, I
16 was trying to needle them every way I could, but I was not
17 breaking the law doing it.

18 Now, you know I didn't kick in Nancy Pelosi's door. You
19 know the mob wasn't howling with rage, because you've seen the
20 videos. So you're not being candid -- having candor with the
21 Court in pretending otherwise. Now, you know these things. I
22 did not kick in Nancy Pelosi's door. I didn't see her door
23 kicked in. I don't know anything about her door being kicked
24 in, and you know it, because you've seen the video.

25 BY MR. ALEXANDER:

1 Q. Sir, you did write those words?

2 A. Again, it sounds like what I wrote, but I was trolling my
3 Facebook cyber stalkers.

4 Q. Sir, what about -- I believe the Court may have mentioned
5 this one --

6 A. If I told you --

7 THE COURT: Mr. Calhoun, Mr. Calhoun, you have to wait
8 for the question.

9 THE DEFENDANT: All right.

10 BY MR. ALEXANDER:

11 Q. Sir, I believe the Court referenced this passage as well
12 when you wrote, "These were the first few hundred or so of us to
13 actually get inside the Capitol. There was a group outside who
14 made the initial break-through not shown, and a few of them got
15 hurt pretty good, but it didn't matter. Those of us took the
16 ranks and pushed on through and headed to the next barricade
17 without stopping. That's what you're seeing here." And you
18 include a photograph.

19 That's not trolling; correct? That's what happened?

20 A. If I told you I was the king of England, would you believe
21 it? If I told you I ran through the Capitol with an AK-47,
22 would you be trying to prosecute me for it? Yes, I was trolling
23 them. I thought the federal government was a cut above Facebook
24 and would not fall for it. Stop falling for it.

25 Q. So sir, in addition to your own Facebook posts and Parler

1 posts, there was also video that you filmed, and that was
2 transcribed for the purposes of your detention hearing. That
3 was marked Government's Exhibit 35-A, and it says, "Calhoun,
4 Capitol, the crowds really are taking it back." There's
5 background noise. Calhoun at 49 seconds, "It looks like we're
6 about to push through these cops. We'll see what happens.
7 Crowd's really pissed." Background noise. And pardon my
8 language. "Fuck the deep state. We'll fucking go to war."

9 That's a transcript of an audio -- or audio from a video
10 that you took and posted to Facebook; correct, sir?

11 A. Look, I posted every video that I took on Facebook. I
12 don't know what you people did with them. I don't know what
13 that is you just said. I posted photographs, and I posted
14 videos because I did not do anything wrong. Okay? Maybe I
15 trespassed. Big deal. Don't steal elections next time.

16 THE COURT: Mr. Alexander, does the defense have a
17 copy of this video?

18 MR. ALEXANDER: Your Honor, the video, I'm not sure
19 about. I do not. I would have to get that from the Middle
20 District of Georgia. But I can do that and provide it. I
21 believe it's clear, Your Honor, that predecessor counsel before
22 Ms. Sherman-Stoltz had it for the purposes of the detention
23 hearing that was conducted on January 21st.

24 THE COURT: All right. Any exhibits that were a part
25 of that hearing I would like to be able to review as well. That

1 includes photographs, videos, documents. Anything from the
2 government or the defense I should have before me now too.

3 MR. ALEXANDER: Your Honor, I believe the majority of
4 those you should have as Government's Exhibit 2 in this matter,
5 which is that compilation .pdf document of photographs marked
6 Exhibits 1 through 35-A. And then the Court also should have
7 Government's Exhibit 4, which is a transcript of the entire --

8 THE COURT: I have the transcript, but were there
9 videos that were offered into evidence?

10 MR. ALEXANDER: Your Honor, I believe it was the still
11 images that were offered into evidence. And I also did attach
12 the exhibit list from that hearing, which I'm reviewing now.

13 THE COURT: We can clear this up later. But to the
14 extent there are exhibits that the government or the defense
15 proffered, I would like to review them as well and, obviously,
16 any additional evidence.

17 MR. ALEXANDER: From my review, just so the Court is
18 aware, there were Exhibits 34 and 35 that were offered and
19 admitted at that January 21st hearing that I don't believe the
20 Court has. Those are labeled Exhibit 34. It's just
21 labeled "video." And then Exhibit 30, which the Court does
22 have, is labeled "screen shot of 34 video." And then Exhibit 35
23 is labeled "Mr. Scott's video, contains Calhoun's video." And
24 35-A, which is what I read for the Court, is labeled "transcript
25 of 35 audio."

1 So the Court only has the derivative evidence of those two
2 exhibits. I will get those and get those filed with the Court.

3 THE COURT: All right. Thank you.

4 MR. ALEXANDER: Other than those, Your Honor, the
5 Court should have everything in Government's Exhibit 3 that was
6 referenced at the January 21st detention hearing.

7 THE COURT: Thank you, Mr. Alexander. You may
8 proceed.

9 BY MR. ALEXANDER:

10 Q. I want to ask you a few questions about your January 21st
11 hearing. That was your preliminary hearing in Georgia and as
12 well as your detention hearing where many of these items were
13 discussed.

14 Do you remember that, sir?

15 A. Yes.

16 Q. So I'm not asking you about any communications you had with
17 your attorney. Do you understand that?

18 A. Sure.

19 Q. But you are an experienced attorney; is that correct?

20 A. Correct.

21 Q. And there is no mention in your detention review where your
22 attorney got to cross-examine the FBI agent of any potential
23 alterations of your social media posts, not a single reference.

24 If you thought that one of your social media posts that
25 were used in evidence against you for that hearing had been

1 altered, you would have told your attorney that; correct?

2 A. Have you ever been in detention?

3 Q. Yes.

4 A. Have you been in detention for a week?

5 Q. No.

6 A. Okay. If every prosecutor and every judge spent a week in
7 federal detention before they started judging, the world would
8 be a much better place. Okay?

9 Q. That does not answer my question.

10 A. I was not privy to all of the documents my attorney had. I
11 was in the Jones County Detention Center in these bizarre COVID
12 lock-down restrictions getting what information I could get when
13 I could get it. I am telling you beyond any doubt that post,
14 that middle sentence was cut out. It was edited. That's false
15 evidence. Now that you know that it's false, stop using it or
16 do something about it.

17 Q. There's nothing else in those posts that are false, though,
18 based on your testimony --

19 A. I don't know that; I don't know that. I'm not going to say
20 that. The entire context is false because the conversations are
21 edited out. How can you judge the answer if you don't know the
22 question or the conversation that prompted that comment? You
23 can't.

24 Q. Your words may be accurate but that they lack the
25 surrounding context?

1 A. That is certainly a large part of the problem, yes.
2 There's one post there where -- you can tell I'm responding. I
3 called Pelosi a commie hag. Well, was she? I mean, I don't
4 know. I can't remember what the conversation was. What did she
5 say to make me say that?

6 Q. Understood, sir. So it's your testimony that you were
7 provoked to say the things that you said online?

8 A. No, that's not my testimony. My testimony is, you are
9 using exhibits that are incomplete, that do not present the full
10 context because they do not have the entire conversation. That
11 makes them fake evidence, certainly unauthenticated and
12 inaccurate.

13 Q. But sir, if they were unauthenticated and inaccurate, why
14 did your attorney argue to the magistrate in the Middle District
15 of Georgia that they were true and that you said those things?

16 A. That hearing -- I don't use this term lightly, because I --
17 these proceedings have shook my confidence in the federal courts
18 to the very foundation. I am still hoping that truth and
19 honesty will prevail. But that judge was so biased against me.
20 I had 37 affidavits for good character, but that didn't matter.
21 He didn't care. He didn't care that I was a member of the state
22 bar with no criminal history. He didn't care. He audibly
23 winced when they mentioned that I had a camouflage backpack. I
24 mean, Alaska can't be that different from Georgia. I mean,
25 everybody's got camouflage. There are people that go hunting

1 all the time.

2 There is reality, and then there's Facebook. Okay? It's
3 important for us to come down to earth, to reality. Facebook is
4 not reality. I was trolling these people. I did a damn good
5 job of trolling them. Apparently, I did too good of a job
6 because now I've got to convince you that I'm not some scary
7 person.

8 Well, look at my record, the real record. A person's past
9 behavior is the best indicator of future conduct. I'm a model
10 citizen. I don't like Communists. I've never liked Communists.
11 That's not illegal. I'm never going to quit advocating for the
12 Second Amendment and the First Amendment. That is not illegal.
13 That is my right. These people that you're using their
14 information, they think they have the right to suppress opinions
15 they disagree with. I'm more like in the Voltaire school. I
16 may disagree with what you say, but I defend with my life your
17 right to say it. Now, we're either going to live in a free
18 country or we're not. Okay? I'm fighting for a free country.
19 I'm not going to jail -- I'm already in jail. I'm not going to
20 stay in jail because of what I said in Facebook. If you think I
21 threatened somebody, show me who I threatened, give me a name,
22 give me a date, give me a post. If you think I did something
23 dangerous, give me a time, date, and place and ask me about it.
24 I have done nothing dangerous. I have done threatening, not in
25 my entire life, and that's just something you're going to have

1 to come to terms with.

2 Q. Sir, is it fair to say, then, that from your perspective
3 you are kind of a victim here of this situation?

4 A. Scribes, Pharisees, and hypocrites. You ever read the
5 bible? Yes, I'm the victim. I'm the victim of a cyber stalker
6 who has manufactured a stack of evidence and had it ready to go
7 the minute that this thing happened and sent it up to D.C., and
8 lo and behold, here I am. And the person I was with who did not
9 have a cyber stalker, he's not in jail.

10 Q. I guess I'm just confused. I'm wrapping up, Your Honor,
11 now with this question. This is my last question, and my
12 confusion is this: You've said that you're really good at
13 trolling people, and you've said you had a lot of things on the
14 Internet --

15 A. I did not say that.

16 Q. Sir, you did say --

17 A. I said I'm very good at trolling these people, and I was
18 more successful than I should have been. I'm not a gratuitous
19 troll. Okay?

20 Q. Understood, sir. So you're not a gratuitous troll, but
21 you're very good at trolling these people, and at the same time,
22 you're saying that your comments were manufactured by a cyber
23 stalker. So I'm trying to figure out how to reconcile those two
24 arguments.

25 A. All right. My comments, I'm using satire. Okay? I'm

1 using -- it may be acidic wit. I am using satire. I don't care
2 if I make a little cry-baby Communist cry. Okay? I don't care
3 about that. That's not a crime. I am not going to threaten
4 anybody. I have not threatened anyone. I am not going to do
5 anything dangerous. I am not going to commit any felonies. I
6 have been very meticulous to have a felony-free record for the
7 past 30 years, longer than that, because I wouldn't even have
8 become a lawyer 30 years ago if I wasn't. So you might as well
9 say my entire life I've got no felonies; right? All right.
10 I've been a good citizen. Okay?

11 These people are -- they are plowing new ground. Do you
12 understand this? They are trying to suppress speech they don't
13 agree with. Do you understand this? They are doing that in
14 this instance by removing half of the conversation and
15 cherry-picking comments in some instances, at least one or two
16 of them editing them to change the entire meaning. Now, that is
17 lying. That is misrepresentation. That's a fraud on this
18 court. Your entire case is based in part on a fraud. Where is
19 the rest of the conversation?

20 Why don't you look at the reality. What have I done in my
21 past? Nothing. You're going by what Facebook stalkers are
22 trying to present as a false picture. You know this.

23 Q. Sir, my last question is, you remember talking about people
24 burning and looting over the summer? I think you were
25 referencing BLM or Antifa. Do you remember --

1 A. Both of them.

2 Q. -- on direct examination -- I'm sorry. Go ahead, sir. Do
3 you remember that?

4 A. You're framing the question as if that didn't really
5 happen. I mean, do you think it happened?

6 Q. You talked burning and looting --

7 THE COURT: Mr. Calhoun, he is asking the questions,
8 not you. Answer his questions.

9 THE DEFENDANT: Okay.

10 BY MR. ALEXANDER:

11 Q. And sir, that was exactly my question. You said, "You
12 can't lay siege to a federal courthouse." I think that's what
13 you were about to say.

14 A. Right. That happened.

15 Q. Right. And just like when you entered the Capitol building
16 on January 6th?

17 A. No, no, not just like. The federal courthouse in Portland,
18 there are marshals who are blinded for life from lasers. They
19 were throwing Molotov cocktails at the courthouse trying to burn
20 down the federal courthouse. They were assaulting police
21 officers. Officers died. They had to go to the hospital.

22 Do not dare say we are like Antifa and that what we did was
23 in any remote way, shape, form, or fashion like what happened at
24 the federal courthouse. We walked in an open door. We didn't
25 try to burn the place down like they did out west. Do you

1 follow me? We walked in an open door while the police watched.
2 We didn't lay our hands on anybody.

3 MR. ALEXANDER: Your Honor, I don't have any further
4 questions. Thank you.

5 THE COURT: All right. Thank you.

6 Ms. Sherman-Stoltz, any redirect?

7 REDIRECT EXAMINATION

8 BY MS. SHERMAN-STOLTZ:

9 Q. Mr. Calhoun, I want to keep this very briefly, please.

10 A. Sure.

11 Q. The various Facebook posts that have been referenced, have
12 you had the opportunity to have those posts in your possession
13 to review each and every one of them or compare them to your
14 Facebook account? Have you had that opportunity yet --

15 A. No.

16 Q. -- to either compare them or see them for any length of
17 time?

18 A. No, and I probably won't have that opportunity because I
19 have been banned, and they have deleted my account.

20 THE COURT: Mr. Calhoun, have you had a chance to
21 review them?

22 THE DEFENDANT: No, I have not.

23 BY MS. SHERMAN-STOLTZ:

24 Q. Prior to your bond hearing in January, had you had the
25 opportunity to see that evidence in advance of the hearing and

1 read it and discuss it with your attorney?

2 A. The 18 exhibits?

3 Q. The government's exhibits that the government submitted.

4 A. I did have a pretrial meeting with my attorney. I know I
5 conveyed to him my concerns about the lack of context, the
6 conversation that was missing. The one particular blatant
7 editing job where the middle sentence was missing, I don't know
8 if that was specifically discussed. I think it was.

9 But there was so much going on at the preliminary hearing,
10 it was just -- that was like nothing. That was a side show at
11 that point.

12 Q. Were you able to see the videos that were presented prior
13 to them being presented in court?

14 A. I don't think any videos were presented in court, by my
15 recollection. I have not seen any videos from the government's
16 side. All I know is I took three videos, and I posted three
17 videos on Facebook riding home from D.C.

18 Who knows what they got. These videos are on -- I've heard
19 they're on YouTube. It's out there people cutting and pasting
20 and doing whatever they want. I mean, it's just insane.

21 No, I haven't seen -- I don't know what the government
22 video evidence is. Let me put it that way. I mean, I've got an
23 idea, but who knows if it's been edited or what they've got.

24 Q. Okay. After your pretrial meeting with your attorney in
25 Georgia, were you allowed to keep any of those exhibits and

1 review them prior to the bond hearing, take a closer look at
2 them or anything?

3 A. I think I received a copy of the -- I think at the bond
4 hearing, and I do not have them currently in my possession
5 because during this saga of federal detention I've gone to six
6 different places, I think. I've been to Oklahoma. And I had
7 to -- at one point I had to drop them in the mail to myself, I
8 think actually when I was in Virginia someplace; otherwise, I
9 was going to lose them. So I had them mail them to myself. So
10 all that stuff got -- all the documents I had from the first
11 court proceeding have been mailed back to my office in Georgia,
12 which I wish I had them here, but I don't.

13 Q. Is it fair to say that you can't remember them exactly?

14 A. Remember exactly what?

15 MR. ALEXANDER: Your Honor, at this point I have to
16 object to leading questions.

17 THE DEFENDANT: I can't remember. Certainly, I can't
18 remember everything that was said at a hearing on the 21st of
19 January, and I did not say that I remembered everything. But
20 I'm pretty sure they did not play any videos at that hearing.
21 They played the audio of the threats that were made against me
22 from my answering machine.

23 And they tried to say I was fleeing even though I had made
24 two court appearances that week. I mean, I don't know how the
25 law is in Alaska, but when somebody is making court appearances,

1 they are not fleeing. Okay? That's the way that works where
2 I'm from. So I was going to court. I went to court Monday. I
3 went to court Tuesday. I had court on Wednesday. I missed that
4 court date because my assistant was so scared of the death
5 threats she had quit the week before. So I had to make a case
6 announcement with the assistant DA on Wednesday, and that was
7 Sumter Superior Court, and that was fine because they were
8 taking written announcements anyway due to COVID. Thursday, I
9 stayed in Macon at my sister's house making phone calls, and I
10 got arrested Friday.

11 So, you know, yes, they thought I was fleeing. I said no,
12 I've talked to the sheriff and judge in two different counties
13 on two different days. So I'm saying the Macon hearing was
14 biased. That right there is proof of how biased it was. People
15 do not --

16 THE COURT: There is not a question pending. Anything
17 else, Ms. Sherman-Stoltz?

18 MS. SHERMAN-STOLTZ: No, Your Honor, not for -- no
19 questions for Mr. Calhoun.

20 THE COURT: Anything more from the government with
21 regard to --

22 MR. ALEXANDER: No, Your Honor.

23 THE COURT: Okay. Mr. Calhoun, I have a question.
24 Did you have a tomahawk with you that day?

25 THE DEFENDANT: No, Your Honor. I did not have any --

1 I had no weapons whatsoever with me in Washington, not even a
2 pocket knife.

3 THE COURT: You testified this may not have been the
4 best idea, but as you sit here now, do you have any remorse
5 whatsoever?

6 THE DEFENDANT: If I had it to do all over again, I
7 would probably have not gone into the Capitol. On the other
8 hand, you know, this is -- this was civil disobedience. And by
9 that, I mean I know I didn't commit a felony. I know I didn't.
10 I probably committed a misdemeanor trespass, and I know that was
11 wrong, and I feel like I've already been punished for that. I
12 accept punishment for that. I would plead guilty to that.

13 But I am not a dangerous person. I'm not who they are
14 trying to make me out to be. There were -- what we did was for
15 love of country. Now, it was not to commit any violence. We
16 didn't do violence. I didn't do any violence. I just didn't.

17 THE COURT: All right.

18 THE DEFENDANT: I'm sorry that I'm here. I regret
19 that this is -- obviously, this is a terrible situation for a
20 lawyer to be in, and I don't -- on the other hand, I know in my
21 heart that I did not do anything morally wrong. I engaged in
22 civil disobedience that at the time and place I felt like it had
23 to be done, and I accept that -- I accept whatever comes from
24 that. But I know I did not commit a felony.

25 THE COURT: All right. Anything further,

1 Ms. Sherman-Stoltz?

2 MS. SHERMAN-STOLTZ: No additional witnesses, Your
3 Honor. I do have argument that would relate to your initial
4 question as far as the factors that you have to evaluate in
5 making your decision.

6 THE COURT: Mr. Calhoun, if I could have you mute, if
7 you're able to do so, your computer, so that the background
8 noise is removed. Thank you.

9 Before we do this, let me just check, the court reporter
10 may well need a break. Why don't we take a brief recess to give
11 her a chance to take a break, and we will come back.

12 MR. ALEXANDER: Your Honor, would five minutes be
13 okay, or should I stay at my desk?

14 THE COURT: Mr. Hopkins, how are we on time with the
15 room?

16 THE COURTROOM DEPUTY: Let me see. I had it set for
17 two hours, which we are at two hours here. There may not be
18 anything set after us. I have to check to see. Bear with me
19 just a moment, Your Honor.

20 It looks like we're good. They have they're going to be
21 cleaning the room afterwards, and I don't see a hearing set in
22 this room after this hearing. So we should be pretty good.

23 THE COURT: All right. Mr. Hopkins -- let's take a
24 five-minute break, and while we're doing that, Mr. Hopkins, can
25 you just follow up just to make sure that we're not going to get

1 cut off for the cleaning or any other reason.

2 THE COURTROOM DEPUTY: Absolutely, Your Honor.

3 THE COURT: All right. Thank you. So we will take a
4 five-minute break for the court reporter.

5 (Recess taken from 3:04 p.m. to 3:12 p.m.)

6 THE COURT: Ms. Sherman-Stoltz, if you would like to
7 continue with your argument.

8 MS. SHERMAN-STOLTZ: Thank you, Your Honor.

9 I will just briefly point to some of the issues in the
10 government's exhibits that would relate to my argument. The
11 government -- it's Attorney Alexander's Exhibit 2, but it
12 references Exhibit 3. So I'm just going to refer to Attorney
13 Alexander's exhibits to make it a little bit easier for the
14 Court.

15 Mr. Calhoun specifically acknowledges and points out that
16 illegal firearms -- or that firearms are illegal in D.C., and he
17 complied with that law. He states that he, along with other
18 rioters, had no weapons. In pictures that were submitted, he
19 appears to be calmly walking through the Capitol building. He's
20 clearly unarmed. His posts show observations of the events of
21 the day, including when he is said to be speaking in a video,
22 and nothing is indicated which says anything about any type of
23 violence.

24 In Exhibit 2 of Attorney Alexander's, specifically pointing
25 to pictures that are labeled Exhibit 31 and 32 from

1 Mr. Calhoun's first bond hearing, those show pictures of weapons
2 and ammunition. Those were Mr. Calhoun's that he legally owned.
3 He did not take them to the Capitol. Those pictures were taken
4 inside of a residence. They were confiscated. That picture
5 only shows possession of legal firearms. It doesn't show any
6 type of intent to do harm. It doesn't show any type of past
7 harm that's been done.

8 I think Mr. Calhoun had a very good point when he said that
9 his past activities, his past history is a good representation
10 of his future actions. He has no criminal history. The charges
11 in which he is facing right now have nothing to do with the
12 posts from summer and fall of 2020. The charges that he has
13 been faced with have to do strictly with the events of
14 January 6th at the Capitol building or in the Capitol building
15 in Washington, D.C., nothing to do with any type of
16 conversation, argument, anything along those lines having to do
17 with 2020 and Parler and Facebook and arguments that he was
18 getting into with other individuals. This has nothing to do
19 with the charges that he is facing.

20 What matters as far as the charges that he's facing in
21 bond, which is the subject that's before Your Honor now, is
22 threat and danger to the community, and there's been absolutely
23 no evidence presented to Your Honor that he is a threat or
24 danger to the community, because he is not. He never has been.
25 He has continued, as he said, to go to court, to represent his

1 clients. He wants to be able to continue to do that. He is
2 going to be in a courthouse on a regular basis in front of
3 judges, law enforcement, just as he has been for the past 30
4 years. He has not done any harm to anyone. The affidavits
5 should speak for themselves in the high esteem that he is held
6 by those that he is close with, those that know him most.

7 His strong ties to his community in Georgia, he has been
8 there his entire life. He does have severe medical conditions
9 that he needs to receive appropriate and proper medical
10 treatment for by a doctor who is aware of his medical history
11 and is aware of the type of treatment that he has been given and
12 the type of results that they are looking for.

13 He indicated under oath, Your Honor, that he knows his
14 responsibility of complying with Pretrial. He knows the
15 importance of following the Court's order if he is given bail.
16 He has spent his whole life following the law, doing what he is
17 supposed to do. He is not going to do anything that's going to
18 put him at a risk of not only having his bail revoked, but
19 potentially facing even worse or additional charges than what he
20 is currently facing.

21 I still stand behind the fact that everything that's been
22 submitted by the government as far as social media posts has not
23 been authenticated by Facebook, by Parler as having been
24 directly from his account. Mr. Calhoun hasn't had ample
25 opportunity to study those or to even see them side-by-side as

1 to what a search warrant from Facebook or Parler might return.

2 There's no illegal or violent action that was taken by
3 Mr. Calhoun while he was in Washington, D.C., or inside of the
4 Capitol. There is nothing. He is right in that there's video,
5 and if there were video that showed him doing something other
6 than what he is currently being charged for, then he would be
7 facing additional charges for that.

8 His representation of what was going on was, as he
9 testified to, done in a narrative format where he is explaining
10 to his followers what he is seeing, what he is hearing, what he
11 believes to be the overall environment. That does not make him
12 a threat or a danger to his community. We're not talking about
13 an individual who has prior convictions, failure to appears, has
14 prior violent convictions or convictions having to do with
15 assault or improper use of firearms. He has nothing like that.

16 The evidence that's been provided by the government doesn't
17 surround, doesn't have anything to do with the charges in which
18 Mr. Calhoun is facing. We would ask Your Honor to, in
19 evaluating bail for Mr. Calhoun, understand that. The evidence
20 that was provided by the government has to do with things in
21 which he was not charged for, things that were in the past, and,
22 as he stated, did not drive him to come to the Capitol on
23 January 6th. He stated that when he put in for a leave of
24 absence, at that point that's when he knew that he was going to
25 go to the Capitol. Anything prior to when he put in for the

1 leave of absence wouldn't relate to or have any merit as to his
2 charges.

3 He would be able to be supervised by probation in Georgia.
4 There would be no issue of his supervision. He would be
5 compliant with all of the terms that the Court would set forth.

6 He's presumed innocent, Your Honor, and again, all of the
7 firearms have been confiscated from him. So any concern that
8 the government might have would be null and void at this point
9 because the government knows that they're not in his possession
10 anymore.

11 He is not a flight risk. He says here under oath that he
12 is ready to take responsibility for his actions. He's not a
13 flight risk. He is not going anywhere.

14 He does not deserve to be detained. His case has been
15 extremely delayed as it is just from his transport from Georgia
16 to Washington, D.C. It took several weeks. His case has taken
17 quite a long time to even get docketed, and this is further
18 delaying his opportunity to be able to have resolution of his
19 case.

20 Your Honor, we ask that you consider all of the evidence,
21 all of Mr. Calhoun's testimony, his lack of criminal history,
22 the fact that he is an upstanding attorney in Georgia. He's got
23 a law firm with clients that are waiting for him. He has a
24 strong family support system, and he has said under oath, Your
25 Honor, that he will comply with every term. You're not going to

1 have an issue with Mr. Calhoun meeting your requirements as far
2 as bail is concerned.

3 THE COURT: All right. Thank you, Ms. Sherman-Stoltz.

4 Mr. Alexander, before you make your argument, can you
5 clarify for me whether the government is seeking detention based
6 on one of the categories of enumerated offenses that are listed
7 in 3142(f)(1), or is it simply seeking detention because it
8 alleges that the defendant possesses a serious risk of flight or
9 that he will obstruct or attempt to obstruct justice?

10 MR. ALEXANDER: Both, Your Honor.

11 THE COURT: All right. And tell me how any of these
12 charged offenses meet one of the categories of the enumerated
13 offenses.

14 MR. ALEXANDER: Yes, Your Honor.

15 Enumerated offenses referred to by the Court in (f)(1),
16 (f)(1)(A) refer to crime of violence, a violation of Section
17 1591, or an offense listed in 2332b(g)(5)(B), as well as for --
18 just one moment, Your Honor.

19 So Your Honor, I believe the guidance that we've received,
20 in cross-referencing (f)(1)(A) where it defines a crime of
21 violence, a violation of Section 1591, or an offense listed in
22 Section 2332b(g)(5)(B) for which a maximum term of imprisonment
23 of 10 years or more is prescribed, as is the case for the
24 obstruction, the 1512(c)(2), Your Honor, that is one of the
25 counts of the indictment. Cross-referencing then to

1 2332b(g) (5) (B), there's a long list of enumerated offenses under
2 that subsection.

3 If the Court will give me a moment. Your Honor, I
4 apologize. In the interest of time, I would have to look more
5 closely at that subsection. I'm happy to argue the other
6 grounds for detention in this case, in Mr. Calhoun's matter.

7 THE COURT: All right. I would like -- because I want
8 to see this additional evidence that I mentioned in terms of the
9 video, whatever other exhibits were before the magistrate in
10 Georgia, as well as the full chain of social media posts, to the
11 extent the government has them, I do want to see that evidence.

12 So I will ask both sides to address this issue in some
13 supplementary briefing because it's not clear to me how the
14 government is proceeding, whether it's proceeding in both ways.
15 You say yes, but you're not arguing that obstruction of an
16 official proceeding is itself a crime of violence, are you?

17 MR. ALEXANDER: I am cautious on that point, Your
18 Honor, because I believe there's some guidance from our office
19 that I would want to clarify prior to making a representation to
20 the Court on that point. I am -- I apologize.

21 THE COURT: I would like some supplemental briefing on
22 that to make sure I understand your position.

23 MR. ALEXANDER: Understood.

24 THE COURT: But putting that aside for a moment,
25 Mr. Alexander, this is certainly very different than many cases

1 in which the government is seeking detention in the sense that
2 there's no evidence before the Court that Mr. Calhoun was armed.
3 There's no evidence before the Court that he assaulted a police
4 officer. There's no evidence before the Court that he was a
5 leader or organizer. Granted, he has these highly inflammatory
6 social media posts. But so far as I can see, the government is
7 not alleging that he orchestrated the group, that he encouraged
8 specific people to attend, or that he was in charge that day in
9 terms of meeting the group that broke through the barricades
10 that were set up by the police.

11 Am I correct?

12 MR. ALEXANDER: Your Honor, I do think I would
13 respectfully disagree with some of that characterization. I
14 would point out the fact that Mr. Calhoun, in his own testimony
15 here today, discussed the number of followers that he had on
16 Facebook, which I believe -- and I'm quoting from my own notes,
17 obviously not from a transcript, but I believe what he described
18 as over 5,000. So I think there's fair grounds where reasonable
19 people could disagree about at least the role that Mr. Calhoun
20 believed he played as a social media influencer in the context
21 of this particular event.

22 THE COURT: All right. But aside from the posts, do
23 you have any other evidence of him planning, coordinating with
24 folks ahead of time other than the posts that encouraged people
25 to come to D.C.? Is there anything more specific than that?

1 MR. ALEXANDER: No, Your Honor. At this point the
2 posts that are in evidence before the Court as Government's
3 Exhibit 2, which are the exhibits, the paper copies of the
4 exhibits that were introduced for Mr. Calhoun's detention
5 hearing in Georgia on the 21st, are the universe of
6 communications that the government is aware of.

7 And I want to make a point here. I'm sure Mr. Calhoun is
8 aware of this as well. Given the nature of his employment as an
9 attorney, search warrant and the review of search warrant
10 returns in this case mandates, obviously, the approval of OEO,
11 PSEU, and a filter protocol, which takes more time than it would
12 otherwise were Mr. Calhoun's employment different and there
13 wasn't the concern for potential privileged attorney-client
14 communications existing in any of these data sets. So the
15 situation here is a little bit different in terms of the
16 execution of search warrants for these media accounts.

17 I would argue, Your Honor, that there is certainly
18 circumstantial authentication for his authorship of the posts
19 that are before the Court today, indeed by his own admission.

20 But with the Court's permission, I would like to take a
21 step back and just summarize the government's perspective on the
22 legal posture that we are in currently in terms of this
23 proceeding.

24 And just briefly, it's my understanding that we're
25 operating under either 3142(f)(2)(B), which allows a hearing for

1 detention to be reopened at any time before or after a
2 determination by a judicial officer if the judicial officer
3 finds that information exists that was not known to the movant
4 at the time of the hearing and has a material bearing on the
5 issue for whether there are conditions of release that will
6 reasonably assure the appearance of such person and the safety
7 of any other person in the community.

8 As a threshold matter, it is the government's position that
9 the Court has not heard today information that did not exist at
10 the time the detention was initially ordered by the magistrate
11 judge in the Middle District of Georgia. That doesn't
12 foreclose, obviously, release for Mr. Calhoun. The defense also
13 cited to 3142(i) in the motion styled "Reconsideration of Bail,"
14 and that would permit temporary release for compelling purposes.
15 Those are the two pathways, the two legal pathways that at least
16 to the government's understanding are available to Mr. Calhoun
17 at this point in the proceedings.

18 So just as a threshold matter, it's the government's belief
19 that there has not been new information provided to the Court
20 here that would justify not only reopening proceedings but then
21 having a hearing on the factors that were considered by the
22 magistrate previously. Again, obviously --

23 THE COURT: But Mr. Alexander, you don't disagree that
24 my review is de novo, do you?

25 MR. ALEXANDER: I do not. I was just about to say,

1 Your Honor, the government completely, obviously, concedes the
2 fact that the Court here has de novo review regardless. But
3 just in terms of the posture and our position for the record on
4 whether or not the defendant has met his burden under
5 3142(f)(2)(B), we assert that he has not, leaving available the
6 3142(i) compelling purpose for temporary release. That's also
7 not the proposal before the Court. The proposal is for
8 indefinite release, which just does not at all comport with the
9 standard or the justification for release under 3142(i).

10 That leaves us, given the Court's de novo review of the
11 review of the 3142(g) factors, which from the government's
12 perspective not only remain unchanged but perhaps are even
13 starker and more important than they were when they were ruled
14 upon by the magistrate in the Middle District of Georgia. That
15 ruling is the subject -- and I think it is worth noting, because
16 as the Court points out these are unusual cases, and there are
17 certainly some instances in which individuals are detained after
18 comparatively cursory proceedings.

19 I think it is important to note here, Your Honor, even
20 though the Court does not owe any deference to the decision of
21 the magistrate in Georgia, that there was a six-page written
22 order that issued following a lengthy both preliminary hearing
23 at which probable cause was found and a detention hearing at
24 which point a number of exhibits were introduced, were discussed
25 by the parties. Critically, the discussion and the tenor by

1 defense counsel in that proceeding did not imply that there were
2 any concerns regarding the authentication or the ownership of
3 the social media posts that were submitted into evidence.

4 That is further reinforced again by the interview that took
5 place several days earlier between Mr. Calhoun and the
6 journalist for the *Atlanta Journal-Constitution* where, very
7 similar to here, Your Honor, Mr. Calhoun essentially admitted
8 all of the essential elements of the offenses for which he is
9 charged. Debatably, 1512(c)(2) he reserved on and certainly did
10 not state that he went with the purposes of impeding the
11 certification. But that's the very --

12 THE COURT: Articulate for me the government's
13 evidence. I have to consider the weight of the evidence. I'm
14 sorry to interrupt, but if you could summarize for me the
15 government's case on that issue.

16 MR. ALEXANDER: Yes, Your Honor.

17 From the government's perspective, the evidence was
18 extremely strong, as noted by the magistrate's written ruling
19 summarizing the evidence presented at the January 21st hearing,
20 which included all of these social media posts, including, as
21 the Court has pointed out, not only photographs of Mr. Calhoun's
22 participation in the January 6th Capitol riot, photographs taken
23 by himself but also videos and transcripts of audio from those
24 videos that were all introduced -- a very brief transcript, I
25 should say, Exhibit 35-A, that were introduced and considered by

1 the magistrate judge.

2 To the extent that Mr. Calhoun's state of mind was in any
3 doubt on January 25th regarding his motivations for his
4 participation in the Capitol riot on January 6th, that doubt
5 should be gone at this point given the free-ranging exposition
6 provided by Mr. Calhoun both in his direct examination and on
7 cross-examination where he discussed at length his motivation
8 and, as the Court, I think, noted, his complete lack of remorse
9 for the events that occurred.

10 Mr. Calhoun, to be blunt, believes himself to be a
11 political prisoner, and that speaks directly to his history and
12 characteristics. Respectfully, I disagree very strongly with
13 Attorney Sherman-Stoltz, her assertion that the earlier social
14 media posts are irrelevant or subsequent conduct is irrelevant.
15 His history and characteristics, Mr. Calhoun's motivation, his
16 state of mind is of direct relevance to the Court here in
17 assessing whether or not to adjust the conditions of release
18 that were previously set.

19 And I think the Court, from the government's perspective,
20 at least, has had a very unique insight into the mind-set of the
21 individuals like Mr. Calhoun who decided to take part in some of
22 the more serious conduct that occurred at the Capitol.

23 Mr. Calhoun, by his own statement and his own admission, was
24 more than a casual tourist. Mr. Calhoun has pointed out that
25 his co-defendant, who from the perspective of the government was

1 not as culpable and does not pose the same degree of risk to the
2 community, has been released.

3 THE COURT: And Mr. Alexander, on that point, is the
4 distinction between the two exclusively the social media
5 postings? Is there something more about his conduct that day
6 that distinguished the two?

7 MR. ALEXANDER: And Your Honor, there is a
8 distinguishing factor from my perspective and the perspective of
9 the AUSA in Georgia who covered the bail hearing for Mr. Nalley,
10 the co-defendant. Your Honor, I think we may be minimizing
11 Mr. Calhoun's statements by considering them just social media
12 posts. These aren't just social media posts. These are
13 Mr. Calhoun's contemporaneous narrative of his state of mind as
14 he committed the offenses that he is alleged to have committed,
15 including his state of mind leading up to it and in the
16 immediate aftermath.

17 And the Court was posed, I think, with a very significant
18 tension between the argument that some of these statements were
19 fictions or altered or edited and Mr. Calhoun's obvious pride in
20 his ability to troll those people or the people that are
21 deserving that. And so it does seem clear, it was clear at the
22 initial hearing, and it's clear from the government's
23 perspective here today that Mr. Calhoun authored the statements
24 that he made describing his state of mind prior to the Capitol
25 riot, during the time of the Capitol riot, and then in the

1 aftermath, and that state of mind evidences a violent
2 insurrectionary attitude, which --

3 THE COURT: Mr. Alexander, I haven't seen the video,
4 which I would like to see.

5 MR. ALEXANDER: Yes, Your Honor.

6 THE COURT: Does the video show him doing anything
7 violent? Does it show him pushing police officers? Where is he
8 relative to the rest of the crowd? Summarize, if you will -- I
9 will watch it, but for my benefit now, what does it show?

10 MR. ALEXANDER: Yes, Your Honor. I have not seen the
11 videos, to be very clear. I'm operating off of the same summary
12 and description that I've been providing to the Court. I have
13 communicated with the AUSA in the Middle District who is
14 forwarding those to me, and they will be provided to the Court
15 and to the defense in due part.

16 Looking at the exhibit list, there are screen shots from
17 the video that are provided. Looking at, Your Honor, for
18 example, Government's Exhibit 6 at the detention hearing, which
19 would be 2-6 for the exhibits for this hearing, there's
20 photographs within the Rotunda and no indication, for example,
21 of proximity to, as Mr. Calhoun said, the woman who was shot and
22 killed or any attacks on the police officers. But that is also
23 not any conduct that Mr. Calhoun, as Ms. Sherman-Stoltz pointed
24 out, that he is charged with.

25 THE COURT: Understood. But I don't know,

1 Mr. Alexander, how many of these cases you're handling now, but
2 my understanding from what I've read of other decisions from
3 this court, judges are often drawing a distinction between those
4 in the violent mob who were actually overturning barricades and
5 assaulting police officers and armed and the like and those who
6 were meandering through the Capitol, taking photographs,
7 et cetera, not that both didn't trespass, but they're drawing a
8 distinction between those two classes.

9 And as I look at this case, based on the evidence before
10 me, it's very difficult to see where Mr. Calhoun falls. On the
11 one hand, even if I credit everything in these social media
12 posts, he says things like, you know, as he puts it, the
13 vanguard that clashes with police or the vanguard that overran
14 the barricades, and then we came in. He does admit to being a
15 part of the first 200. But I don't have a sense as to how many
16 people it took to overrun the barricades.

17 So I'm asking you, to what extent is he a part of that
18 front-line aggressive pack as opposed to the rest of the pack
19 who was trespassing? And he talked about admiring the art on
20 his social media posts. It's very hard for me based on these
21 posts alone to determine what his role was.

22 So I'm wondering, what other evidence aside from his social
23 media posts -- he does use "we" a lot, we did this, we did that.
24 But does the government have any evidence that shows he took any
25 of these more aggravated steps?

1 MR. ALEXANDER: That's a fair question, Your Honor,
2 and it's certainly a granular and individual analysis. I only
3 have been assigned five of these cases. So speaking from that
4 universe, Mr. Calhoun is on the more serious side of the
5 spectrum, which is why we are making, after undertaking an
6 independent review, or having filed our opposition.

7 And to answer the Court's particular question, Your Honor,
8 I don't think there's any reason not to credit Mr. Calhoun's
9 assertion, as the Court has pointed out, in Exhibit 28, so 2-28,
10 when he said "these were the first 200 of us or so to actually
11 get inside the Capitol."

12 THE COURT: I will credit that, but does the
13 government have independent evidence that suggests that the
14 first 200 were all running over police officers and assaulting
15 police officers, or were there a smaller batch that were on the
16 frontline and a really enthusiastic batch behind that that maybe
17 started after 20 or 50 or 75, I don't know, and does the
18 video -- not the video that we're referring to where it shows a
19 picture of him, but do you have a sense from videos that show or
20 don't show him how many people were overrunning the barricades
21 and stomping on police officers and that kind of thing?

22 MR. ALEXANDER: And Your Honor, I can't. I can't
23 represent to the Court that I have again a granular
24 understanding of not only Mr. Calhoun's alleged actions but the
25 alleged actions of the mob around him. I think that is

1 absolutely a fair question to ask. I don't necessarily from the
2 government's perspective believe it should be the determining
3 question -- Mr. Calhoun's precise position within what he
4 described as the first 200 should necessarily be determining the
5 threshold question for the purposes of whether or not to lift
6 the detention order.

7 THE COURT: It sounds like you have no independent
8 evidence with regard to him talking violently to police
9 officers, assaulting police officers, you know, talking to other
10 individuals he was with; you don't have any additional evidence
11 other than what he is posting in realtime. Is that correct?

12 MR. ALEXANDER: That's correct, Your Honor, but again,
13 just to point out, he is not charged and we did not allege or
14 infer that he has assaulted any police officers. It's
15 definitely not the argument that the government is making here.
16 And Ms. Sherman-Stoltz is correct. If we had that evidence, we
17 would have charged him with the more serious offenses to be
18 sure.

19 THE COURT: I don't mean to interrupt. I want to move
20 to the potential flight issue. If you're not done with the
21 danger on the Capitol invasion, I'd like to hear --

22 MR. ALEXANDER: Your Honor, there is an exhibit that
23 is in evidence before the Court, 35-A, which is a brief
24 transcript of one of the videos that we discussed briefly where
25 Mr. Calhoun apparently says, "Looks like we're about to push

1 through the cops. We'll see what happens. The crowd is really
2 pissed," and then background noise and words to the effect --
3 and I don't know if these were from Mr. Calhoun, but the words,
4 "Fuck the deep state. We will fucking go to war."

5 So I do think there is a reasonable grounds in evidence in
6 the record before the Court, as it was before the magistrate in
7 the Middle District of Georgia, to assess Mr. Calhoun's
8 intentions. And I think that even though there's some
9 evasiveness on the part of Mr. Calhoun's testimony here today,
10 obviously and understandably self-interested, there is a clear
11 grounds for the Court to assess the dangerousness of
12 Mr. Calhoun.

13 And that's further reinforced, I would submit -- and this
14 was something that I think was obviously picked up on the part
15 of the Court as well, but it is relatively rare that we have a
16 defendant who believes themselves in sincerity, as I believe
17 Mr. Calhoun does and has demonstrated, to be a political
18 prisoner and to not think that he committed anything other than
19 a simple trespass in the interest of civil disobedience.

20 And it's that fundamental disjunction between the conduct
21 and the seriousness of the conduct that Mister -- the
22 overwhelming weight of the evidence supports that Mr. Calhoun
23 even by his own admission committed. Again, there's no debate
24 that he was inside the Capitol and participated in the early
25 stage of the Capitol insurrection. There's a disjunct between

1 that reality and Mr. Calhoun's perspective on it. And when
2 somebody believes themselves so sincerely to be a martyr or a
3 political prisoner, the Court can have no assurance that he is
4 going to take conditions that are imposed by the Court seriously
5 if he doesn't believe that there's any merit whatsoever to the
6 criminal case that's been lodged against him. That is a very
7 serious concern on the part of the government.

8 THE COURT: Mr. Alexander, with respect to the risk of
9 flight grounds that the government has also argued, can you
10 elaborate more on what specific facts support that argument?

11 MR. ALEXANDER: Your Honor, I would only refer to the
12 written findings of the magistrate in the Order of Detention.
13 That was attached as Exhibit 1 where the magistrate there ruled
14 that "Mr. Calhoun showed that his intentions were more than mere
15 fantasies when he participated in the violent invasion of the
16 United States Capitol during a joint session of Congress
17 during" -- "defendant indicated that he intended to participate
18 in further armed acts of violence, and at the time of his
19 arrest, defendant was evading law enforcement and was heavily
20 armed."

21 And so --

22 THE COURT: Do we know what the evidence of evading
23 law enforcement was?

24 He has presented a plausible explanation that he and his
25 family were getting threats and he went to his sister's and he

1 missed court dates because his assistant stopped working,
2 et cetera. That's one explanation.

3 Were there agents surveilling his house and he slipped out
4 the back? What more can you tell me about the circumstances of
5 his so-called flight?

6 MR. ALEXANDER: Yes, Your Honor. I am happy to do so.

7 If we take a look at the transcript of that January 21st
8 hearing and specifically the testimony of Special Agent
9 Armentrout, who was the FBI agent who testified for the
10 government both for the purposes of the preliminary hearing as
11 well as detention, there was extensive conversation both on --

12 THE COURT: No, I've reviewed it, and it was not
13 entirely clear to me what exactly happened based upon the
14 agent's testimony. I was hoping that you could clarify more
15 what provoked him --

16 MR. ALEXANDER: Your Honor --

17 THE COURT: -- to leave the house. Was the agent
18 sitting outside the house?

19 MR. ALEXANDER: Right. And I don't have any
20 additional evidence. I mean, I don't have a witness prepared to
21 testify today, Your Honor, or Special Agent Armentrout to speak
22 more fully to that question. So at least for the purposes of
23 today's proceeding, we're relying on the transcript of his
24 previous testimony on this question.

25 THE COURT: I'm sorry. I'm going to have to step away

1 for just a moment. I see that my computer battery is getting
2 low. So I'm going to go get the power cord before it stops. I
3 will be right back.

4 (Pause.)

5 THE COURT: All right. My apologies.

6 Mr. Alexander, anything more you can add on the flight
7 issue we were discussing?

8 MR. ALEXANDER: Yes, Your Honor. I think the flight
9 issue relates directly and most pressing from the government's
10 perspective, as I said, and I won't belabor the point, to the
11 fact that Mr. Calhoun believes himself to be a martyr in this
12 case. And so I think that decreases the amount of confidence
13 the Court can have that he is going to take seriously the
14 conditions that are set by the Court should he be released.

15 THE COURT: What does that have to do with flight,
16 that he thinks he's a martyr? I guess that it's telling in many
17 ways, but in terms of evading.

18 MR. ALEXANDER: Your Honor, I think there's reference
19 to this in Mr. Calhoun's testimony, that if he does not think
20 that these proceedings before this Court are legitimate or that
21 there's an adequate basis for his detention or being held on
22 conditions of release -- or released, rather, on conditions, I
23 don't know how necessarily the Court could find -- again, the
24 ultimate question when an individual is released on conditions
25 is the faith that the Court is placing in the individual to

1 abide by those conditions. And that faith in large part and in
2 most cases is predicated on the assumption that the defendant
3 understands the seriousness of the situation.

4 Here, we're in a little bit of a, I believe, unusual
5 circumstance where Mr. Calhoun has extremely strong opinions
6 about the legitimacy of the case that was brought against him
7 and, as he stated, the role of the federal judiciary in
8 presiding over these cases.

9 So I think that does raise unique and legitimate concerns
10 regarding not only the safety of the community but risk of
11 flight as well. I don't dispute Ms. Sherman-Stoltz's assertion
12 that he is a long-time resident of the community where he was
13 arrested. This is not a situation where, you know, Mr. Calhoun
14 is a citizen of another country to which he could flee, but he
15 does not believe that he can be legitimately prosecuted for the
16 offenses that have been alleged in his own country. And that
17 again just raises very serious concerns about how predictable
18 his behavior is going to be on release.

19 I think there is pretty substantial sworn testimony at the
20 detention hearing discussing in detail not just some of the
21 communications that we've discussed today, but directly relevant
22 to the history and characteristics under 3142(g) for Mr. Calhoun
23 is how some of these initial reports came in. Respectfully,
24 Your Honor, some of that seems to conflict a little bit with
25 Mr. Calhoun's testimony. The testimony at the January 21st

1 hearing is that there were such significant concerns about
2 Mr. Calhoun's activity and his statements that the police chief
3 in the community in which he lives alerted the FBI.

4 So again, I don't think it's necessarily accurate -- and
5 I'm not saying I think this is what the Court is doing, but I
6 don't think it would be accurate to minimize the social media
7 posts as Mr. Calhoun is obviously now arguing --

8 THE COURT: I am not minimizing them, to be clear.
9 I'm just trying to probe whether the government has additional
10 evidence separate and apart from the social media posts that
11 supports the way in which you're saying I should interpret them.
12 That's all.

13 MR. ALEXANDER: Yes, Your Honor. I think one section
14 of the proceedings on the 21st referenced threatening
15 communications that had actually been reported to a tip line in
16 November of the previous year. And I'm quoting from page 10 and
17 11 of the transcript that was introduced as Exhibit 4 in this
18 matter where Mr. Calhoun apparently makes statements along the
19 lines of "some of you will live long enough to be exterminated
20 with extreme prejudice. It's going to be hard to buy a beer
21 when Democrats are being shot on sight. We're going to kill
22 every last Communist who stands in Trump's way."

23 Again, understanding Mr. Calhoun's argument now after a
24 month in custody that he didn't really mean it the way he said
25 it and that he's just good at trolling those people even though

1 he hates Communists, I don't think that that is a credible
2 rationalization or explanation for the statements that were made
3 in the context of these activities. And those statements are
4 disturbing, and they are more than mere puffery or trolling,
5 because Mr. Calhoun took concrete steps to actually act on the
6 sentiments that he expressed both before, during, and after the
7 Capitol riot.

8 THE COURT: And yet, when the police arrived at his
9 sister's home, he did voluntarily surrender, right, and he had
10 firearms in his house; right?

11 MR. ALEXANDER: That is correct, Your Honor. There
12 was not a shoot-out. There was not a use of force. That is
13 correct.

14 THE COURT: Do you have any evidence -- aside from the
15 deleted postings on his social media accounts, do you have any
16 additional evidence that would suggest that he destroyed
17 evidence relating to this January 6th event?

18 MR. ALEXANDER: Not at this time, Your Honor, no. We
19 are not making the argument that Mr. Calhoun has destroyed
20 evidence, and he has not been charged with that offense.

21 THE COURT: All right. Anything more, Mr. Alexander?

22 MR. ALEXANDER: Your Honor, yes. Again, I would just
23 note that the chief of police in Mr. Calhoun's community sent
24 the FBI the Facebook screen shot that was labeled Exhibit 1, so
25 Exhibit 2-1 for the purposes of this proceeding, that depicted

1 an original video inside the Capitol building titled "after we
2 forced our way in but before the cops were..." and then the
3 partial word "route." Exhibit 2 is describing -- Mr. Calhoun
4 stating being physically present in Washington on January 6th in
5 a December 29 posting, consistent with his testimony here that
6 he put his leave in December 28th.

7 Again, all of these statements and actions leading up to
8 the Capitol riot on January 6th are relevant as far as the
9 history and characteristics and the dangerousness that
10 Mr. Calhoun poses to the community, given his perspective on
11 these issues.

12 On or about January 4th or 5th, posts that are quoted in
13 part of the record on page 13 of the transcript of the
14 January 21st proceeding, "Headed to D.C. to give the GOP some
15 backbone and let them know this is their last chance to stop the
16 steal or they are going to have bigger problems than these
17 coddled Antifa."

18 There's again the post that we discussed regarding banning
19 guns in the capital, the reference in -- I don't believe that
20 Mr. Calhoun disputed this, of whether the police can enforce
21 their gun laws depends on how many armed patriots show up.
22 Although certainly the government is not asserting that
23 Mr. Calhoun was armed, but he was certainly rationally
24 self-interested and aware enough as a practicing attorney not to
25 break the law to that extent.

1 But the statement "we're going to get inside the Capitol
2 before this ends" is in evidence before the Court, and
3 Mr. Calhoun was true to his word. These are not just puffery on
4 the Internet. It's not just Mr. Calhoun saying -- trolling
5 things on the Internet. This is not an indictment of his
6 political perspective. We're talking about his actions, the
7 actions that are undisputed, in the context of his very clear
8 perspective on those actions.

9 Mr. Calhoun references law enforcement retreating. And
10 again, the line about the mob howling with rage in the section
11 that the Court quoted here, as well as, I believe, the Court in
12 the magistrate's decision saying that "crazy Nancy would have
13 been torn into little pieces," it just frankly is not credible
14 or Mr. Calhoun's explanation now is not credible that, oh, I was
15 maybe talking about what other people were talking about or it's
16 just a joke we make a lot, we make a lot of jokes about people
17 being harmed.

18 Those aren't jokes, Your Honor, in the context of actual
19 actions being taken to fulfill the statements and
20 representations that he's made in the context of his social
21 media postings. Mr. Calhoun, in Exhibit 6, so 2-6, there's
22 testimony that he wrote, "We physically took control of the
23 Capitol building in a hand-to-hand hostile takeover." These are
24 again Mr. Calhoun's statements. These are statements that are
25 made in the context of his actions the same day.

1 And Your Honor, if Your Honor believes that in hindsight
2 that based on Mr. Calhoun's testimony that it was basically all
3 a joke or that he was exaggerating everything, then that
4 certainly speaks to, you know, the necessity of detention. It's
5 the government's perspective based on what we believe to be
6 overwhelming evidence of his conduct that day and the context
7 for it that those weren't jokes.

8 So I guess it is ultimately, Your Honor, a credibility
9 determination for the Court whether or not to credit
10 Mr. Calhoun's explanations today.

11 THE COURT: What would be really helpful for me to
12 figure that out is to have video and photograph evidence of what
13 actually happened and witnesses, and that's what I'm struggling
14 with, because there's not a lot of that in front of me now.
15 There are a lot of social media posts, and it would be helpful
16 to have more of the actual footage and photographs of what
17 actually was happening.

18 MR. ALEXANDER: May I make just one last --
19 understood, Your Honor, and as I said earlier, I've already
20 e-mailed the AUSA in the Middle District of Georgia, and we will
21 make every effort to get those video exhibits that are
22 referenced in Government's Exhibit 3 in this matter filed for
23 the Court's review.

24 I would point to Government Exhibit 30 in Government
25 Exhibit 2, so 2-30, is described as a screen capture from one of

1 those videos, and I think it's fair to describe it as a scrum, a
2 densely packed crowd. That's my characterization, obviously.
3 It's the Court's determination. But this is more than casual
4 trespassory tourism in an otherwise kind of vacant building.
5 The video evidence that was submitted to the magistrate in
6 Georgia and the screen shot of it that is in evidence before the
7 Court here is consistent with Mr. Calhoun's own statements about
8 being in the early group of individuals who breached the
9 Capitol, pushing their way past police.

10 THE COURT: All right. So Mr. Alexander, you are
11 going to give me a supplemental brief on the government's bases
12 for detention and the reasoning that supports that.

13 Do you concede that the rebuttable presumption does not
14 apply here?

15 MR. ALEXANDER: I do, Your Honor.

16 THE COURT: All right. Anything else, Mr. Alexander?

17 MR. ALEXANDER: Your Honor, if I could reserve that if
18 I get different guidance on that subject, subject to my own
19 ignorance, but I do.

20 THE COURT: Ms. Sherman-Stoltz?

21 MS. SHERMAN-STOLTZ: Yes, Your Honor. Thank you.

22 Just to respond to some of the government's statements and
23 arguments that he just presented, the government has not
24 presented any evidence at either bond hearing as to the
25 defendant being charged with anything that relates to posts,

1 actions, or behavior prior to January 6th. So the charges that
2 the defendant is being faced with arise solely out of the
3 offense date of January 6th. He is not being charged with
4 anything having to do with social media posts from summer and
5 fall of 2020. There's no crime that was committed. Whether the
6 government attorney agrees with the statements that were being
7 made, believes them to have been too aggressive or
8 inappropriate, that's the government's opinion, but nothing
9 unlawful was done. Otherwise, he would have been charged for
10 it, but he's not.

11 What he is being charged for is his actions and conduct,
12 alleged actions and conduct out of January 6th. They have not
13 shown any evidence that the defendant has done anything other
14 than trespass. The defendant admitted that himself, that he
15 trespassed. There has been no evidence that he went anywhere
16 other than even the Rotunda area.

17 If Your Honor looks at the screen shot that the government
18 referenced, I believe it was one of the pictures, 2-6, I
19 believe. I guess it's a continuation of 2-6 and then 7, and it
20 shows where he is. The screen shots, I guess, of a video, 2-1,
21 Government Exhibit 2-1, shows where he is.

22 There's been no evidence that he went anywhere beyond the
23 Rotunda area, no evidence that he was even anywhere close to
24 Nancy Pelosi's office even if he was not narrating what was
25 going on or restating what he was hearing.

1 THE COURT: I'm not following that. What's your
2 point? Are you saying he was not in Speaker Pelosi's office?

3 MS. SHERMAN-STOLTZ: No. There's been no evidence
4 that's shown that he has. So the government referenced the
5 screen shot that was provided in their Exhibit 2 where he
6 indicates the "mob howling with rage, crazy Nancy probably would
7 have been torn into little pieces but she was nowhere to be
8 seen," the government hasn't provided any evidence that he was
9 even anywhere close to Nancy Pelosi's office or anywhere outside
10 of the Rotunda. Because the evidence that they've shown only
11 shows that he was in one particular area of the Capitol, and
12 there's nothing else that indicates he was anywhere else.

13 If he had been anywhere else, if he had done anything else,
14 he would have been charged with it. The government has all of
15 the footage.

16 THE COURT: It's difficult to accept the suggestion
17 that he didn't anticipate getting into the Capitol, given his
18 social media postings. Do you rebut that?

19 MS. SHERMAN-STOLTZ: No, I don't, and I don't believe
20 the defendant did either. He didn't -- you mean getting into
21 the Capitol prior to his arrival in D.C.?

22 THE COURT: Maybe I misunderstood his testimony. I
23 thought he was saying he didn't expect to go there until
24 something happened that day.

25 MS. SHERMAN-STOLTZ: I understood that his testimony

1 was when he put in for leave from work is when he knew that he
2 would at least be going to D.C., when he took the days off. I
3 don't recall him having testified -- I'm sorry.

4 THE COURT: I'll read the transcript. So you don't
5 dispute that that day he intended to get in the Capitol?

6 MS. SHERMAN-STOLTZ: No, we don't dispute that he got
7 into the Capitol.

8 THE COURT: That he anticipated getting into the
9 Capitol.

10 MS. SHERMAN-STOLTZ: No, I'm not making a statement
11 that he anticipated it in advance of going inside.

12 THE COURT: Remind me. Was there not a media post
13 ahead of time saying "we're going to get into the Capitol,"
14 something to that effect?

15 MS. SHERMAN-STOLTZ: I don't -- there were posts about
16 going to Washington, D.C.

17 THE COURT: I thought there was a post about him
18 getting in the Capitol, but I will take a look at the record.

19 MR. ALEXANDER: Your Honor, I apologize for
20 interrupting. That may be Government's Exhibit 2-4, so Exhibit
21 4 in Exhibit 2. There's a picture of the exterior of the
22 Capitol and a crowd and Mr. Calhoun writing "we're going to get
23 inside the Capitol before this ends."

24 THE COURT: Okay. But that was when he was at the
25 Capitol?

1 MR. ALEXANDER: That's correct, Your Honor.

2 THE COURT: All right. Understood.

3 MS. SHERMAN-STOLTZ: Government's Exhibit -- I guess
4 it would be Exhibit 3, and it has the list of all of the
5 exhibits that were entered in the January bond hearing. And the
6 government here has referenced 35. And I would just like to
7 address the situation again. We are looking at something that
8 the description alone says "Mr. Scott's video" and then in
9 parentheses says "contains Calhoun's video."

10 So not having seen it, I'm not sure even what to take of
11 that. Somebody else's video that contains Calhoun's video.
12 That's not saying and that's not alleging that he did anything
13 or went anywhere other than what the pictures have demonstrated
14 and what he under oath admitted to.

15 The same with the video that the government referenced, I
16 believe number 34 on the list, so it would be Exhibit 3-34, and
17 it just says "video." Video of what?

18 And the government is saying that these are examples of
19 evidence that they have as to his, you know, behavior, as to his
20 actions, and none of that is indicating that he has done
21 anything other than what he admitted to, and that's trespass.

22 He has a right to take a position or to believe that he's
23 not guilty of something. That doesn't go to his state of mind
24 as far as him being a flight risk that the government is
25 alleging that because he doesn't understand or he is not willing

1 to understand or comprehend the nature of the charges in front
2 of him, that that makes him a flight risk. We would disagree
3 with that, Your Honor. He understands the nature of the charges
4 that are facing him. He understands that there is a felony
5 facing him. He is able to take the position that he doesn't
6 believe that there's evidence that will support that, and he is
7 also able to take the position that he is not guilty of that.
8 That doesn't then make him a flight risk because he's taking
9 that position.

10 He was arrested, as you pointed out, Your Honor, peacefully
11 with no problems on Friday. Thursday, he indicated that he went
12 to his sister's house. Defense -- in the January bond hearing,
13 which can be seen in the transcript, so Exhibit 4 for the
14 government, page 5, the transcript, it lists all of the defense
15 exhibits, and it lists the voicemail messages which Mr. Calhoun
16 mentioned in his testimony of threats.

17 In our exhibit, Exhibit F, we provided affidavits from
18 individuals that heard those voicemails, and we also provided
19 mail and e-mail which indicates and shows that he was receiving
20 threats and threats of harm. And that's why he left his house
21 and he went to his sister's house.

22 He went there on a Thursday. He was arrested on a Friday.
23 He wasn't fleeing. He was going somewhere where he believed he
24 would be safe, hoped that he would be safe. He took his
25 firearms with him in order to have responsibility as he's

1 supposed to do as a firearms owner of protecting them to ensure
2 that if his house was broken into nothing is taken, nothing is
3 taken, used inappropriately, used to harm anyone. He
4 transported them to his sister's house, which was not unlawful,
5 and then gave them over when he was asked, told them where they
6 were.

7 He's done nothing but comply with the government and with
8 the charges that have been presented in front of him. He's not
9 done anything that would indicate otherwise.

10 The last point that I would like to note on what the
11 government addressed, and I believe it's their Exhibit 2 dash --
12 it looks like it might be 5 or a continuation of 5 or a part of
13 6, but it's the screen shot that would be in between -- one
14 screen shot that has a yellow sticker that says "5" and then
15 another screen shot that has a yellow sticker that says "6."
16 And it says, "Today the American people proved that we have the
17 power." "We." He is defining American people as "we" and
18 also "we" as the American people. And in the rest of that
19 post, "We physically took control of the Capitol building," that
20 was the "we" as the American people, not him, not himself. He
21 doesn't say, "I physically took control of the Capitol
22 building." He's referring to "we" as the American people, all
23 of the people that were there.

24 That doesn't show that he did anything other than enter
25 into the Capitol building like he said he did and remain in the

1 Rotunda area, which the government's evidence has shown nothing
2 other than that, no harm, peaceful, admiring everything that was
3 around him, and then exited and left. He described 15 to 20
4 minutes to get out, so exited a period of time later.

5 That's all that his actions have shown. That's all the
6 evidence that's been presented before Your Honor.

7 THE COURT: Well, to be fair, the posts that he wrote
8 suggest he went more than to just the Rotunda. Now, that
9 depends upon whether I believe his testimony that that was just
10 puffery, but his posts certainly suggest he went farther than
11 the Rotunda.

12 MS. SHERMAN-STOLTZ: Understood, Your Honor, and if
13 the government is able to provide evidence that he did, then I
14 will back off of that argument, but as of such, they have not.
15 They have not entered any evidence which indicates otherwise.

16 THE COURT: Ms. Sherman-Stoltz, if I were to entertain
17 releasing Mr. Calhoun with restrictions, who would serve as the
18 third-party custodian?

19 MS. SHERMAN-STOLTZ: Any one of his sisters would, but
20 one in particular who has offered that he can come and live with
21 her and she also has a second residence.

22 THE COURT: Is that the sister who testified at the
23 hearing before the magistrate in Georgia?

24 MS. SHERMAN-STOLTZ: If I may look at the transcript
25 real quick, Your Honor, to confirm.

1 No, Your Honor. The sister would be Mary Calhoun, and she
2 did not testify, I don't believe. No, I don't see her at least
3 on the witness list. I believe that the sister that testified
4 in Georgia was the one that he went to the house of, where he
5 was arrested, and no, that is not the same sister that is
6 providing two alternative locations which we noted in our
7 motion.

8 MR. ALEXANDER: Your Honor, I don't mean to interrupt
9 Ms. Sherman-Stoltz. This is just purely a point of
10 clarification, because I'm just not sure either. There is a
11 Mary Calhoun who did testify. Her testimony begins at page 82.
12 So is that -- I just offer that by way of asking if that's the
13 same individual or not.

14 THE COURT: So it sounds like that might be.

15 MS. SHERMAN-STOLTZ: It is, yes. I apologize.

16 THE COURT: So the same sister who testified is the
17 sister who would serve as a third-party custodian if he were to
18 be released?

19 MS. SHERMAN-STOLTZ: Yes, Your Honor. However, he has
20 two additional sisters that could also serve as custodian if the
21 Court would prefer, but that is the one that has volunteered her
22 home or she has a second home that she has volunteered as well.

23 THE COURT: All right. Understood. Anything further,
24 Ms. Sherman-Stoltz?

25 MS. SHERMAN-STOLTZ: No, Your Honor.

1 THE COURT: Mr. Alexander?

2 MR. ALEXANDER: No, thank you, Your Honor.

3 I did receive and will be filing the exhibits that the
4 Court asked about from the clerk in the Middle District of
5 Georgia.

6 And then my only other question would be what briefing
7 schedule the Court would like for our supplementary briefing --
8 or I guess my supplementary briefing.

9 THE COURT: Well, I think time is of the essence at
10 this point. So I would like to turn back to this on Monday. So
11 to the extent, Ms. Sherman-Stoltz, you would like to address
12 this issue as well, I offer you the same opportunity, and that
13 is the issue I raised earlier about the government's bases for
14 detention here under the statute.

15 Can the parties file those by -- I'll ask you,
16 Mr. Alexander. By Sunday at noon could you file a supplemental?
17 It doesn't need to be lengthy, but just something setting out
18 the government's position with regard to the grounds on which
19 you're seeking detention and the support from the statute.

20 MR. ALEXANDER: Yes, Your Honor.

21 THE COURT: And Ms. Sherman-Stoltz, again, you may do
22 the same. And as soon as I can get that additional evidence
23 submitted -- Ms. Sherman-Stoltz, I will also offer you the
24 opportunity to the extent you want to to supplement anything you
25 provided with regard to Mr. Calhoun's medical records. You're

1 welcome to do that as well. But I would ask that you all file
2 that by noon on Sunday, which is the 7th, and then I would like
3 to set a follow-up hearing Sunday afternoon.

4 Mr. Hopkins, can you tell us what's available Sunday
5 afternoon?

6 THE COURTROOM DEPUTY: Your Honor, Sunday afternoon?

7 THE COURT: I'm sorry. Monday afternoon, the 8th.

8 THE COURTROOM DEPUTY: No problem, Your Honor. We're
9 free.

10 THE COURT: No, I mean for the room.

11 THE COURTROOM DEPUTY: Oh, okay. That makes a lot
12 more sense. Let me see.

13 MR. ALEXANDER: Your Honor, while Mr. Hopkins is
14 looking at that, if I could just ask perhaps to have a deadline
15 of 2:00 Eastern on Sunday, if that's agreeable to the Court?

16 THE COURT: That's fine. The same holds true for
17 Ms. Sherman-Stoltz, 2:00 Sunday.

18 MS. SHERMAN-STOLTZ: And Your Honor, may I just
19 clarify? You had mentioned previously about wanting all of the
20 exhibits that were in the bond hearing before the magistrate in
21 January. Does that include the defense exhibits as well?

22 THE COURT: Yes. I should have everything before me
23 that was before that magistrate. I don't understand why I don't
24 have that already.

25 MS. SHERMAN-STOLTZ: Okay. I will track down the

1 voicemail messages that were listed. I believe I have
2 everything else.

3 THE COURTROOM DEPUTY: Your Honor, it looks like for
4 the most part that it's actually a relatively --

5 THE COURT: Would 3:00 work, Mr. Hopkins?

6 THE COURTROOM DEPUTY: I think 3:00 can work. I have
7 to -- I think 3:00 can work.

8 THE COURT: Okay. We will confirm this. The parties
9 should assume that we will have a continuation of this hearing
10 on Monday, March 8th, at 3:00 p.m. If there's an issue with the
11 time, the courtroom deputy will reach out to you to let you
12 know.

13 Is there anything else we need to address?

14 MS. SHERMAN-STOLTZ: No, Your Honor, not for the
15 defense at this time.

16 MR. ALEXANDER: No, Your Honor.

17 THE COURT: Okay. Thank you all.

18 (Proceedings adjourned at 4:20 p.m.)
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1 CERTIFICATE OF OFFICIAL COURT REPORTER

2
3 I, Sara A. Wick, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
5 above-entitled matter.
6

7 Please Note: This hearing occurred during the
8 COVID-19 pandemic and is, therefore, subject to the
9 technological limitations of court reporting remotely.
10

11
12 /s/ Sara A. Wick

March 22, 2021

13 SIGNATURE OF COURT REPORTER

DATE
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